No. 14656

United States
Court of Appeals
for the Ninth Circuit

HANS FORSTER, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Transcript of Record

(In Six Volumes)

VOLUME VI.

(Pages 2329 to 2790, inclusive)

Appeal from the United States District Court for the Western District of Washington, Northern Division

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(Testimony of L. Hicks Taylor.)

Q. Finstad and Utgard, financial statement supplied? A. Yes.

Q. Hans Forster has with the Washington State Bank, Issaquah, approximately one hundred thousand dollars on deposit.

Does that refresh your recollection, Mr. Taylor?

A. It refreshes it to the point that I was not there when it was discussed.

Q. And you didn't even know, did you?

A. I did not know that he had one hundred thousand dollars.

Q. No, sir, you were preparing financial statements for Mr. Forster and he was holding out one hundred thousand dollars on you when he was trying to get a loan, is that right?

A. I was preparing financial statements from the books I operated on and not from his personal savings account or any of his other operations outside of these businesses.

Q. So, Mr. Strack, Mr. Donaldson, and [4667] the credit manager of the Peoples National Bank with whom you had this discussion knew that Mr. Forster had one hundred thousand dollars in the Issaquah State Bank but you didn't know it?

A. They knew more than I did, absolutely.

Q. Did you advise the credit man with whom you talked—by the way, let's tie this down and withdraw that.

You talked only once to Mr. Strack about this financing of the Alpine Dairy Building?

A. Yes, that is correct.

(Testimony of L. Hicks Taylor.)

Q. You did not talk to Mr. Donaldson about it?

A. He was present as I remember.

Q. But you had only one conversation about it?

A. On that loan, yes, of two hundred thousand dollars.

Q. On any loan, Mr. Taylor.

A. I am speaking of two hundred thousand dollars.

Q. What loan was made, Mr. Taylor?

A. I don't know right at the present time.

Q. One hundred thousand dollar loan was made, wasn't it, Mr. Taylor?

A. It may have been. I wasn't present. [4668]

Q. So that we can definitely say that in connection with any loan, construction loan, the building of the Alpine Ice Cream plant, you had only one conversation with the officers of the bank, Peoples Bank, and that was the single conversation with Mr. Strack and Mr. Donaldson were each present?

A. That is correct.

Q. Now, at what you originally said was a secret call with a credit manager of the bank did you have more than one conversation with a credit manager of the bank involving your statement of February 28, 1948? A. I do not recall.

Q. So, if there was only one it might be then the gentleman might be Mr. Quinten H. Ellis, the credit manager, is that correct?

A. It could have been, possibly. I don't remember the party's name.

Q. And did you discuss with the party, whose

(Testimony of L. Hicks Taylor.)

name you do not remember, the amount of the proposed building loan? A. I do not remember.

Q. You had a very detailed discussion with that gentleman on or about May 5, 1948, of the assets of Hans Forster, didn't you? [4669]

A. Of his companies, yes.

Q. All of his companies?

A. All of his companies, yes.

Q. I will ask you if you did not advise Mr. Quinten H. Ellis in that conversation upon May 5, 1948, at the Peoples National Bank, that Finstad and Utgard was solely owned by Hans Forster?

Mr. LeSourd: I will object to this as improper recross, your Honor.

The Court: I am inclined to sustain the objection.

Mr. Griffin: I ask leave to reopen on cross for the purpose of asking this question and for impeachment in connection with the other impeaching question.

The Court: The Court—in connection with the conversation made with regard to the loan?

Mr. Griffin: Yes, this is in connection with the witness' testimony before in which he went into detail that Mr. Forster did not own all of Finstad and Utgard, and I may say——

Mr. LeSourd: (Interposing) Well——

Mr. Griffin: Just a moment now. I did try to comply with the suggestion made at the recess period to cut my cross-examination and this is [4670]

(Testimony of L. Hicks Taylor.)

an impeaching question that I would like to ask in connection with his testimony.

Mr. LeSourd: Your Honor, this is the first time I ever heard of impeaching someone on a legal conclusion over a very complicated transaction. It seems to me they have fully covered it and he testified a number of times that he showed Mr. Forster in these statements as the sole owner of Finstad and Utgard because he had a contract permitting him and authorizing him to buy all the stock of Finstad and Utgard but he hadn't completed that contract.

I object to the question on the grounds that it is not an impeaching question and not proper recross examination. I will object to reopening his cross for any such purpose.

The Court: I hesitate to be too restrictive about reopening but Mr. Griffin, we have gone so extensively into cross examination that I believe——

Mr. Griffin: I appreciate I cut mine by a day at least as to matters I thought might be material.

Q. (By Mr. Griffin): Mr. Taylor, you stated on examination a [4671] little bit ago that you explained the changes in Exhibit 252 to both officers of the Peoples National Bank.

Please, the name of those two officers to whom you explained those changes?

A. I said to the best of my recollection I did.

Q. The name of those two officers, please?

A. It would be Strack and Donaldson.

Q. When did you make that explanation of the change to them?

(Testimony of L. Hicks Taylor.)

A. I wouldn't remember. Sometime after I prepared it.

Q. Sometime after you prepared this financial statement of February 28, 1948? A. Yes.

Q. Well, the two hundred thousand dollar loan was under discussion then, wasn't it?

A. Before that, I believe, yes.

Q. And after that?

A. Not in my presence at any time.

Q. Well, you explained the changes, you said, to them after you made the statement, is that correct?

A. Well, when else would I make the explanation? [4672]

Q. The explanation you made was in connection with the loan, wasn't it?

A. It is possible it was.

Q. So that you had more than one conversation with them about the loan, didn't you?

A. No, I did not.

Mr. Griffin: That is all.

The Court: Is that the end of your recross?

Mr. Griffin: Yes, your Honor.

The Court: Ladies and Gentlemen of the Jury: We will now recess for the noon-day luncheon and the Court calls your attention to the admonition given you on similar occasions and asks that you heed it on this occasion.

We will now recess until one-forty-five.

(Whereupon, the Jury retired from the courtroom.)

(Testimony of L. Hicks Taylor.)

The Court: You may step down.

The Witness: Thank you.

(Witness leaves stand.)

The Court: Mr. Keesling, do you have any other questions?

Mr. Keesling: No. [4673]

The Court: Then, Mr. LeSourd, you will start on redirect?

Mr. LeSourd: Yes, I will, your Honor.

The Court: Court will recess until 1:45.

(Whereupon, at 12:17 o'clock, p.m., a recess was had until 1:45 o'clock, p.m. April 23, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. LeSourd.

Redirect Examination

Q. (By Mr. LeSourd): Mr. Taylor, you have Exhibit 252 there before you? A. No, sir.

Q. That is the February 28th.

A. This is 213. [4674]

(Testimony of L. Hicks Taylor.)

(Whereupon, exhibit was handed the witness by Mr. LeSourd.))

Q. Handing you Plaintiff's Exhibit 252, which is this Hans Forster financial statement of February 28, 1948, that you were discussing just before we adjourned at noon, I believe you testified that the cash item in that statement was made up by taking what could be readily liquidated from other assets and putting it up into cash, didn't you?

A. Yes, that is correct.

Q. Now, on cross-examination you were asked to total certain items of cash assertedly from personal savings accounts of Mr. Forster totalling, I believe, one hundred ninety-nine thousand, or one hundred ninety-one? A. Yes.

Q. Is any part of that cash in this figure for cash on this February 28th balance sheet to your recollection? A. No, it is not.

Q. Now, I am handing you Plaintiff's Exhibit 272 which is the Alpine Ledger, and I will ask you to read from that ledger the amount of accounts receivable of Alpine Dairy as of February 28, 1948?

A. $328,480.65. [4675]

Q. Now, will you read the accounts receivable for Alpine Dairy listed on Exhibit 252, this financial statement? A. $228,480.65.

Q. Which is $100,000 less and erases that one hundred thousand dollars put on that financial statement?

A. It was moved up into the cash column.

Q. Now, with that $100.000 as one item in that

(Testimony of L. Hicks Taylor.)

cash column, is it possible for the $199,000 of personal cash that you totalled for Mr. Obenour, I believe, to be in that cash column?

A. It is impossible.

Q. Now, also, Mr. Taylor, will you read me the net worth of Mr. Forster shown on this February 28th statement? A. $755,512.22.

Mr. LeSourd: I will ask that this be marked.

The Clerk: Defendants' Exhibit No. A-126 marked for identification.

(Defendants' Exhibit No. A-126 marked for identification.)

Q. (By Mr. LeSourd): Handing you Exhibit 126 for identification, can you state what that is?

A. This is a financial statement dated October 31, 1948, of Hans Forster.

Q. And by whom was it prepared?

A. By me.

Mr. LeSourd: I will offer Defendants' Exhibit A-126.

Mr. Maxwell: What was the date?

Mr. LeSourd: October 31, 1948.

Mr. Obenour: No objection.

Mr. Griffin: No objection.

The Court: Exhibit A-126 may be admitted.

Mr. Keesling, I am sorry.

Mr. Keesling: No, no objection.

(Defendants' Exhibit A-126 admitted in evidence.)

Q. (By Mr. LeSourd): Handing you Exhibit A-126, the Hans Forster financial statement of Oc-

(Testimony of L. Hicks Taylor.)

tober 31, 1948, will you give us the net worth as shown on that statement?

A. The net worth is $778,363.18.

Q. And, again, what was the net worth on 252, February 28, 1948? A. $755,512.22.

Q. In other words, an increase of about how much? A. $22,000. [4677]

Q. Between February and October?

A. Yes.

Q. Now, the October, 1948, statement shows how much for cash? A. $41,850.36.

Q. Can you tell us what that cash represented, or will you want to check a journal to do so?

A. The cash that appears on Exhibit 126 is composed of two items, cash on hand of $18,652.09, and a bank balance of $23,198.27, totalling $41,850.36, the identical amount shown on Defendants' Exhibit A-126.

Q. From where have you taken those two items, Mr. Taylor?

A. From the cash account of the Alpine Dairy, and the bank account of the Alpine Dairy ledger.

Q. Then this cash represents only the Alpine cash? A. That is correct.

Q. Now, in this statement of October, 1948, is there any place in this statement of any other items of cash? A. No, it is not set out separately.

Q. By that, you mean there is cash in some of the subsidiary companies that he owned?

A. Yes, that would be correct. [4678]

(Testimony of L. Hicks Taylor.)

Q. And how would those companies be shown on the balance sheet?

A. The subsidiary companies, Issaquah Creamery Company, is shown on a net worth basis.

Q. And the others likewise?

A. The others likewise.

Q. Now, is there in this October, 1948 balance sheet, any amount from Mr. Forster's savings accounts or personal accounts? A. There is not.

Q. And then—that is all—in other words, that October, 1948, statement includes only the assets from the businesses which you had contact with as accountant, is that right? A. That is correct.

Q. And the same is true of the February, 1948, statement? A. Yes, that is correct.

Q. With the changes that you have mentioned?

A. Yes, anticipations.

Mr. LeSourd: May I have A-122?

(Whereupon, exhibit was handed to Mr. LeSourd by the Clerk.)

Q. (By Mr. LeSourd): Mr. Taylor, do you recall during Mr. Griffin's cross-examination that he handed you for identification [4679] Defendants' Exhibit A-122 and I believe asked you if this was a statement of the 1947 bonus, milk bonus, paid to shippers of Finstad and Utgard?

A. Yes, I remember it.

Q. And do you recall you testified that you could not identify it? A. That is correct.

Q. And do you recall that that was in connection with examination made of you concerning a

(Testimony of L. Hicks Taylor.)

$10,000 increase in the bonus payments to milk shippers at Finstad and Utgard?

A. Yes, I remember it.

Q. And do you recall, Mr. Taylor, that Mr. Griffin, holding this document in his hand, and looking at it, asked you whether or not the bonus payments at the end of that year were actually only $500; do you remember that question?

A. Yes, I remember it.

Mr. LeSourd: Your Honor, I will offer Exhibit A-122 in evidence at this time, to show the actual bonus figure that was before Mr. Griffin at the time he asked that question.

Mr. Griffin: There is no objection.

I endeavored to have it entered, and you objected. [4680]

The Court: A-122?

Mr. Griffin: Yes, your Honor.

The Court: It may be admitted.

(Defendants' Exhibit A-122 admitted in evidence.)

Q. (By Mr. LeSourd): And what is the total bonus shown there, and for how many individual shippers?

A. There appears to be eight shippers listed here.

Q. And what is the total bonus shown on that document? A. $2,139.55.

Mr. LeSourd: Your Honor, I would like permission to circulate this among the Jury.

The Court: Can you proceed with the examina-

(Testimony of L. Hicks Taylor.)

tion while you do it? It might save time if you want to read it.

Mr. LeSourd: I would rather have them see it, your Honor.

(Whereupon, exhibit was circulated among the Jury.)

Mr. LeSourd: May I have A-64?

(Whereupon, exhibit was handed to Mr. LeSourd by the Clerk.) [4681]

Q. (By Mr. LeSourd): I might ask you, Mr. Taylor, one question while that is circulating.

Do you have any information at all about the number of milk shippers to Finstad and Utgard?

A. Well, not too clearly.

Q. Do you have any general information as to whether there were many or few?

A. It is my recollection there were a great many.

(Whereupon, there was a brief pause.)

Q. Now, Mr. Taylor, coming back again for a moment to the matter of these—of this February 28, 1948, statement, you testified, I believe, that to the best of your recollection, you had gone over that statement with Mr. Strack and Mr. Donaldson. Do you have any clear recollection of that conversation?

A. Not exactly in that particular statement, but it would seem that I did because of the fact that that statement was signed by Mr. Forster and I believe it was gone over with them, but to definitely state it is hard for me to do.

Q. That is the extent of your recollection?

(Testimony of L. Hicks Taylor.)

A. Yes.

Q. Now, also you stated, I believe, that you had had [4682] only one conversation in which the $200,000 loan figure was mentioned.

Did you have other conversations with regard to loans in different amounts, or with regard to matters where no loan figures were mentioned?

A. Well, my—I remember particularly the one time that we discussed the $200,000 loan, and I don't recollect discussing that particular loan again, although we may have.

When the discussion goes on, you discuss a lot of things sometimes, and I really wouldn't want to make the statement that it wasn't discussed again in some minor way.

Q. Did you have other meetings with the bank in this same general period?

A. Yes, we did, or I did, with Mr. Forster, but it was in conjunction with other statements.

Q. At any of these meetings, were smaller loans than $200,000 considered for this ice cream building, this building you were talking about?

A. I believe there was a discussion of a lesser loan, but I don't remember any amount being discussed. I think that was settled with Mr. Forster when I wasn't present.

Q. Mr. Taylor, I hand you Exhibit A-64 which I believe you have testified was an audit of the Issaquah [4683] Creamery Company you made in 1932? A. Yes.

Q. Is there any difference between this audit

(Testimony of L. Hicks Taylor.)

and your normal monthly and annual reports?

A. Oh, yes; very much.

Q. What is that difference?

A. This is a detailed audit. I examined all the records at Issaquah, and developed my findings from actual information from the records and detailed each one myself, so that I could sign a statement that I had prepared it, and made an audit, and I so state.

Q. What were the circumstances under which this audit was made?

A. It is my recollection that Mr. Peters and possibly Mr. Hans Forster was present, and that the thought was to somewhat revamp our books in a small way. There was not much of a change necessary, but we wanted to be positive of our figures as of that date to continue on from there, in the—with the actual audited figures.

Q. Have you at any later time made an actual audit of Issaquah Creamery Company?

A. Not a complete detailed audit. I don't believe that I have ever even made a balance sheet audit since this period, and it is my recollection that [4684] I was never requested afterward to make an audit.

Q. At later dates in the '30s, I think some of the exhibits show some further detail with your monthly or annual statements than normally appears. Can you tell us what the circumstances were of those?

A. Mrs.—or Miss Neukirchen was a very capable person at Issaquah, and it is my recollection that

(Testimony of L. Hicks Taylor.)

two or three times she prepared auxiliary documents for me, such as lists of accounts receivable, accounts payable, but they were not officially submitted. They were just turned over to me to fit with the returns, and as I remember, they did reconcile with the ledger accounts.

Q. When you mentioned Miss Neukirchen, is that the one who testified here?

A. No, this was Miss Alice Neukirchen.

Q. That is her sister? A. Yes.

Q. Mr. Griffin has introduced various balance sheets and profit and loss statements for different dates back in the '30s, and brought out that some statements contained different figures than others, which read as of the same date.

You testified, I believe, that in these cases both sets of figures are true. [4685]

Would you explain the reason for this?

Mr. LeSourd: Or, I will withdraw that, your Honor. It has been gone over so much I will ask a more specific question.

Q. (By Mr. LeSourd continuing): Now, I think you also testified with regard to that that the bank, when you were submitting statements, were interested in market values, I think you said?

A. That is correct, yes.

Q. Now, with regard to assets like equipment and routes, what did the tax laws require as to the figures that should be used for those assets?

Mr. Griffin: I object to that question. The witness has shown no qualification to testify as to what

(Testimony of L. Hicks Taylor.)

the tax laws of the United States are. It is calling for an expert opinion.

Mr. LeSourd: On the contrary, your Honor, he is an accountant.

Mr. Griffin: I know what he did. There is no qualification.

Mr. LeSourd: There is many years' experience, and this is ground work for the books he was keeping.

Mr. Griffin: I am serious in that objection.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Mr. Griffin: It is not the best evidence.

The Court: I think probably you should ask him if he knows.

Q. (By Mr. LeSourd): Well, if you know, Mr. Taylor.

A. The tax laws, as I understand——

Mr. Griffin: (Interposing) Just a moment. It can be answered "yes" or "no."

Mr. LeSourd: No, it can't be.

The Court: I will ask:

Are you familiar or were you familiar, rather, with the tax laws insofar as they apply to the requirements with regard to establishing the worth of equipment—was it?

Mr. LeSourd: No, as to how the equipment and other like assets should be carried for tax purposes.

I have forgotten how I phrased the question originally.

(Testimony of L. Hicks Taylor.)

The Court: Are you speaking now of income tax laws?

Mr. LeSourd: That is right.

Mr. Griffin: Why don't we get the specific [4687] question now and see whether I have an objection to it?

The Court: Well, could you reframe that, then, Mr. LeSourd, or do you wish the reporter to read it?

Mr. LeSourd: I will reframe it, your Honor.

Q. (By Mr. LeSourd): Under the Income Tax Laws, Mr. Taylor, how are assets like equipment to be carried, on what basis? A. The cost.

Mr. *Griffin*: Any further objection?

Mr. Griffin: I didn't object to that question. That is why I asked it be reframed.

Q. (By Mr. LeSourd): Is there a difference between cost and market value?

A. Yes, a vast difference.

Q. And what is that difference?

A. Many purchases of equipment at cost may be bought very below the market value, and could be considered at the market value from some—in some kinds of application for credit, and so on.

Q. From your experience with banks, what are they interested in as to the figures for assets like equipment? [4688]

A. They are interested in market value.

Q. Now, you——

Mr. LeSourd: Strike that.

Q. (By Mr. LeSourd continuing): What did your books, kept for Mr. Forster's enterprises, show

(Testimony of L. Hicks Taylor.)

as to figures for equipment and like assets?

A. The cost values.

Q. Now, you testified that you made up financial studies and balance sheets and profit and loss statements for the banks at various times, and what did they show as to figures for equipment and other assets?

A. They show the market values, and in the case of routes appraisals and sometimes real estate showed on an appraisal basis.

Q. Now, when you say "appraisal," what has that to do with market value, if anything?

A. Well, appraisal—appraisal companies establish the current market value.

Q. Now, other statements, I think you said, were taken directly from the figures on your ledger. What did those figures reflect for the figures for equipment and like that?

A. In the case that has been mentioned here, an appraisal of routes have been—the routes have been increased to determine a market value of them by [4689] appraisal by Mr. Forster.

Q. Now, there are also among these exhibits that were put in evidence, back in the '30s were profit and loss statements, and I believe Mr. Obenour went over them again this morning as to differences in these various figures.

What changes might be made on a profit and loss statement for credit purposes as distinguished from book values?

A. For a credit man's survey, or a credit man's

(Testimony of L. Hicks Taylor.)

study, they are interested in, somewhat, a profit and loss on the basis of the actual cash withdrawn by officers in the company, or management personnel, and as there are other values, as depreciation, which is purely an estimate, sometimes depreciation values govern, but the Internal Revenue studies can be of a greater amount than the equipment actually depreciates and that, in itself, is again drawing an appraisal to the value of the equipment.

Q. In your experience with banks, do you have any information as to whether or not amounts owed by a corporation to its majority, or sole stockholder, are oftentimes subordinated to bank loans?

A. I have known of a number of cases of that kind. [4690]

Q. And where a bank has made loans to a closely held corporation, what, in your experience, has been their interest so far as seeing the profits before taking into consideration undrawn stockholders' salaries and other amounts owed to stockholders?

Mr. Griffin: I object because it is not redirect or material. It is an entirely new issue.

The Court: This has reference to some items on those statements.

Mr. LeSourd: Exactly, your Honor. Mr. Obenour spent a great deal of time this morning trying to show there is a difference in these profit and loss statements.

The Court: I will overrule objection.

A. The bankers many times like—would like to know a possible development in case of a slow-

(Testimony of L. Hicks Taylor.)

down, whether the salary withdrawals could be reduced, and given an added profit in case of liquidation as I have displayed on those statements, a possibility, in case of liquidation, so the profit figure could be determined by the reduction in salary, and a reduction in depreciation, although depreciation is only an application account. It is not a cash reduction account. [4691]

Q. (By Mr. LeSourd): What was the situation in these years that we are speaking of concerning the deduction by a corporation on the accrual basis of the entire authorized officers' salary whether it was drawn or not drawn?

Mr. Griffin: My same objection; not proper redirect, and it is immaterial, completely a new issue.

Mr. LeSourd: On the contrary, your Honor. We agree that the whole thing was immaterial when originally gone into it, and they have tried to show some impropriety, and we are certainly entitled to bring out the facts as to the situation.

The Court: Objection overruled.

A. The Internal Revenue Department have been —in those years were fairly fair in salaries to the different officers. I do not believe that we had a question on the Issaquah Creamery.

Q. (By Mr. LeSourd): You are speaking now of whether the salary was reasonable or not, are you? A. That is right.

Q. Now, assuming it was reasonable, what is the situation as to whether the corporation was permit-

(Testimony of L. Hicks Taylor.)

ted to deduct the entire salary on its return, even though it wasn't all drawn?

A. That was allowed. The undrawn portion could [4692] be accrued as to salary payable to the officers.

Q. So that any financial statement made by the tax return profit and loss statement would show a deduction of the salaries?

Mr. Griffin: I object as leading, at least.

The Court: Objection sustained.

Mr. Griffin: If this witness will testify, I prefer it.

A. The salaries——

Mr. LeSourd (Interposing): Just a moment.

Q. (Continuing): And what would the profit and loss statement submitted with the tax return show as to the salary allowable?

A. It would be the authorized salary to the officer would be deductible, and the undrawn portion would appear as a liability in the balance sheet.

Q. And what would be the result of that on the profit shown in that tax return statement as compared to the profit shown in a statement submitted to a bank where you showed profit before the undrawn salary?

A. It would show—the tax return would show a lesser profit than the one for credit purposes to the bank.

Q. What would cause differences in the items of notes, or accounts payable, in financial statements [4693] compared for these two different purposes?

(Testimony of L. Hicks Taylor.)

A. Oftentimes an application of an account—financial statements that we have prepared are always from 30 to 40 days after the close of the current year, and sometimes information comes in that would—that affects the appearance of an accounts receivable, or it might affect a cash picture, and make changes as though—in a cash position there may be sometimes the bank overdraft, and you reduce the debit cash by a bank overdraft, and then not show the same overdraft as a liability, and you can have bad debt reserves that you restore.

Q. Now, just a moment, I would ask you, Mr. Taylor, about accounts payable:

In the statements that were shown to you, where differences appeared under the words "accounts payable", what is the situation as to whether or not there were different breakdowns of that, of accounts payable, on these various statements?

A. Many times, there will be various headings in your ledger accounts under accounts payable liabilities that will be assembled or consolidated, into one account on a skeleton or short form balance sheet.

Q. Then how about on a balance sheet prepared [4694] for other purposes?

A. They sometimes are detailed more than on others.

Q. And what would cause differences in these financial statements for different purposes in your notes and accounts receivable?

A. Well, the situation of an accounts receivable

(Testimony of L. Hicks Taylor.)

might be converted into a note during the interval and be transferred into the note account, which would reduce the accounts receivable account, and it is possible that there might be credits on the accounts receivable that you might throw into a liability, and allow the higher amount of accounts receivable to appear.

Q. Now, how about differences in the item of cash?

A. Differences in the item of cash would be the assembling of the cash. You might have a large cash balance, a bank overdraft; you could carry the bank overdraft, or apply it against the cash account to reduce the cash account; you can take—it has been known to be taken that the outstanding checks would be considered a liability instead of applied to the bank, and used the total shown on the bank statements, and show it checks outstanding as checks in transit on the [4695] liability side of this balance sheet.

Q. All as accounts payable?

A. All as accounts payable.

Q. Now, what would cause differences in the amount of inventory?

A. There are many ways that an inventory could have a difference. For instance, right close to the end of the year, someone has much——

Mr. Griffin (Interposing): Just a moment, if the Court please, isn't the question what he did, rather than any theory of what might have oc-

(Testimony of L. Hicks Taylor.)

curred? I object to this line of questioning. I have no objection to what he did, and why.

The Court: I assume that probably the background of some of these matters are not available?

Mr. LeSourd: If your Honor please, this witness was put through this situation: he was put on the stand and presented with a myriad of financial sheets over 20 years ago, and expected to remember every single adjustment that occurred. Of course, he can't. What he has to testify to is the general type of differences that occurred, and I will ask him as to whether the adjustments—in due course, I will ask him whether the adjustments made in these are the reflections of these various types of differences. [4696]

Mr. Griffin: If he can't remember what he did, how can he testify as to what they are? That is my objection.

The Court: Well, in view of the nature of the situation, I think that the objection should be overruled. Generally speaking, if the items are available, the figures are available, they possibly should be produced, if they can be, but it might unduly lengthen the trial, and the Court, under the circumstances, will overrule the objection.

Mr. Griffin: Now, I am a little at a loss to know what your Honor is referring to by figures being produced.

The Court: As I understand it, many of the balance sheets and profit and loss statements in the

(Testimony of L. Hicks Taylor.)

past years may or may not have been based upon other work sheets.

Mr. LeSourd: That is right, your Honor, and based on appraisals of assets which were given this man for use in market value, and all sorts of different things, which are not available today.

Mr. Griffin: Well, I had understood—I don't know anything about any work sheets in those years in question, by testimony or otherwise, but they have been made available. The Government made available to counsel for both parties, so far as I know, and understand all [4697] documents of every kind, nature, and description in connection with this matter.

Mr. Moriarty: So far as we know, as far as we have had.

Mr. Griffin: Right. I take it the obligation is just as much upon counsel who had that right of investigation and did investigate to produce them or show——

Mr. Moriarty (Interposing): There were a number of documents not delivered to us, but which stayed in your possession.

Mr. Griffin: Right. That one box which they had access to, and which they went over.

Mr. LeSourd: If Mr. Griffin desires, we will suspend for a week and go back into the files to 1932 and analyze every transaction, but, your Honor, when this came in, we objected to it as utterly irrelevant and immaterial, and we think it is still, but over our objection Mr. Griffin and Mr.

(Testimony of L. Hicks Taylor.)

Obenour went into these matters in detail, item after item, trying to make it appear that this witness was giving different statements of profit and balance sheets.

We can take a week off, and study those things, if the Court desires, but I feel that the witness can testify here as to the type of changes that this [4698] consisted of, and can testify that in general these different financial statements reflected this type of a change without going into that in detail.

The Court: Well, I will again state, if there are work sheets or other data that is available, that can be produced, I think that it probably should be produced. However, the Court will not require that, and under these circumstances, the matter covering the past years I am inclined to overrule the objection.

Mr. Griffin: Now, in the light of your Honor's statement, I make this statement to you as an officer of this Court:

That, as far as I am concerned, there has been produced, and there has been available to the witness on the stand, every document that ever came into the possession of Hans Forster from this witness, and upstairs, recess period after recess period, there has been examination in the office of the Government, left there for that purpose and used by both counsel all the time and any documents we thought were admissible here, or bearing on any matter, I brought into this courtroom, every single

(Testimony of L. Hicks Taylor.)

solitary document that I thought was bearing upon any question that I asked.

I withdraw the objection in the light of your [4699] Honor's ruling, but I don't want any inference that I haven't presented here everything that we could find.

I will ask, in the light of your Honor's statement, later during this trial,—a thing I didn't go into because I thought it was immaterial, irrespective of what the witness said,—to call witnesses to show precisely the nature of the stuff he left at Issaquah.

I will ask leave to do that before we close the trial now.

The Court: The Court—I will advise the Jury the Court, by comment on the evidence here, doesn't mean to indicate that there has been any effort made on the part of Mr. Griffin to not make available any and all documents that have been made available to him, or to the defendant Forster.

The Court, in making this ruling, believes it may serve that a reasonable opportunity be given to the witness to meet some of the matters brought out on cross-examination. The effectiveness and the weight of the answers is a matter for the Jury.

You may proceed.

Mr. LeSourd: Thank you, your Honor.

Q. (By Mr. LeSourd): I believe I asked what would cause differences in the item of inventory between the statements for your books and the statements for credit purposes? [4700]

A. Many things could affect an inventory. The

(Testimony of L. Hicks Taylor.)

particular one, if a person who was a creditor of the company would turn back merchandise which would go into the inventory and be credited to his accounts receivable, and it happened very close to the closing time, it would make the inventory picture a little different, and the accounts receivable, and there is a possibility that there could be between the time of closing of the books and a 30-day period, an increase in the value of that inventory, which a man for credit purposes might take advantage of on the same market value basis.

Q. One more item along that line: Did you have reserve for bad debts set up in these years?

A. It is my recollection that we did in two or three different years.

Q. And would it be—might there be any differences in reserve for bad debts in the treatment of those on the books for tax purposes and for credit purposes?

A. If a party is on the reserve basis, and establishes that with the Internal Revenue, he must stay on a reserve basis, if he is reporting income that way, but if he is only setting up a reserve for his own information, it is possible that he can reanalyze the [4701] accounts that have been set in reserve, and set some of them up as current accounts or even eliminate the reserve accounts and let the credit agency determine the collectibility of some of those accounts.

Q. Would that—would such adjustments and bad debts likewise affect profit or loss?

(Testimony of L. Hicks Taylor.)

A. They would affect profit or loss, yes.

Q. Now, did Mr. Beadon Hall ever ask you to give him a false statement?

A. Absolutely not.

Q. Mr. Griffin put that question to you, Mr. Taylor, and I believe you answered you couldn't remember just what Mr. Beadon Hall asked you. Why did you make that answer?

Mr. Griffin: Objected to as cross-examination of his own witness.

Mr. LeSourd: On the contrary, your Honor.

The Court: I believe the form of the question is objectionable. If he wishes to explain his answer, he may.

Mr. LeSourd: Yes.

Q. (By Mr. LeSourd continuing): Would you explain your answer to Mr. Griffin's question?

A. I believe in the examination I was a little [4702] confused as to what the question was about, and answered without having proper thought of what the question was intended to convey.

Q. Did Mr. Beadon Hall ever talk to you about these credit statements?

A. During the critical period, as Mr. Beadon Hall himself testified to, Mr. Hall used to have Mr. Forster and I come to the bank almost every month and go over the statements with him.

(Whereupon, there was a brief pause.)

Q. During your cross-examination, Mr. Taylor, there was mention made of the item of real estate, and it was brought out that the item of real estate

(Testimony of L. Hicks Taylor.)

was not on the balance sheet for several years, and I believe you testified that it was in equipment.

Handing you Plaintiff's Exhibit 262, I will first ask you what this book is?

A. This book is the general ledger of the Issaquah Creamery Company.

Q. And the book is opened at what sheet?

A. It is a ledger captioned real estate, equipment and trucks, and——

Q. (Interposing): Go ahead.

A. And the date is 1939, January 1st, and on the left-hand side of the ledger sheet, on the debit side, we [4703] have real estate $9,557.44; equipment $88,394.12; and the third item of trucks, $21,677.83. On the credit side, under the same date on the right-hand side of the page, we have depreciation reserve, $62,938.77.

Q. Real estate and equipment is all in one account?

A. It is combined into one fixed asset account.

Q. Now, generally, in connection with these statements back in the '30s, you were repeatedly asked questions, I believe, such as which of these statements was false, why did you manipulate the figures, and like questions. Are any of these statements false that you made, Mr. Taylor?

A. No, they are not.

The Court: When you refer to statements, are you referring to statements on the stand?

Mr. LeSourd: No, I am referring to the financial statements back in the '30s that were identified

(Testimony of L. Hicks Taylor.)

on cross-examination and I will repeat my question in the light of that matter.

Q. (By Mr. LeSourd): Were any of them false?

A. No, they were not. [4704]

Q. Now, prior to 1940, Mr. Taylor, how many ledgers did you have for the business of Issaquah Creamery Company?

A. The Issaquah Creamery was made up of one ledger until 1940.

Q. And prior to 1940, what did that include with relation to the business of Alpine Dairy?

A. The Issaquah Creamery carried all of the assets and liabilities and the operating accounts of the Issaquah Creamery and the Alpine Dairy were kept separately. I mean by that, sales and purchases and expenses were kept separate between Issaquah and Alpine, but all appeared in the same statement.

Q. All in one ledger?

A. One ledger, yes.

Q. Now, Mr. Griffin asked you if Mr. Forster relied on you in accounting matters? Were there others involved in the accounting from 1945 to 1949 in these witnesses on whom he relied?

A. Yes.

Q. Who?

A. Mr. Erickson, Mrs. Wilcox, Mr. Keck.

(Whereupon, there was a brief pause.)

The Court: Do you want to take a recess now, Mr. LeSourd? [4705]

Mr. LeSourd: That would expedite matters, your Honor, while we get some exhibits.

(Testimony of L. Hicks Taylor.)

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-afternoon recess. The Court calls your attention to the admonition given, on similar occasions, and asks that you heed it on this occasion. You may now be excused.

* * * * * [4706]

The Court: You may proceed, Mr. LeSourd.

Mr. LeSourd: Thank you, your Honor.

Q. (By Mr. LeSourd): Mr. Taylor, going back to the subject of the various balance sheets and profit and loss statements back in the 1930's which were introduced, you have, earlier on my redirect examination, outlined a number of changes that would take place between a report for tax purposes or book purposes and credit purposes.

Were the changes which you made in balance sheets and profit and loss statements during that period for credit purposes of the type and nature that you outlined? A. Yes.

Q. Mr. Taylor, you recall, do you, that on cross-examination you were questioned with regard to the closing out of an Arctic Gardens bank account in the National Bank of Commerce?

A. Yes, I remember. [4716]

Q. And this was in November, 1948, as you recall it? A. Yes.

Q. And you recall that you were asked questions with regard to the balance of $64.57 that was in that account? A. Yes, I remember.

Q. And, handing you Exhibit A-117, is this the

(Testimony of L. Hicks Taylor.)

check for that amount which you were presented on cross-examination?

The Court: Is this A-117?

Mr. LeSourd: A-117, your Honor.

The Witness: Yes, this is a check issued to L. Hicks Taylor for $64.57.

Q. (By Mr. LeSourd): And do you recall your testimony that that amount that you received in closing out that account was applied on your fees?

A. I remember so testifying.

Q. Now, the Arctic Gardens had another bank account?

A. Yes, its physical bank account was at the Peoples Bank. This was at the Queen Anne Branch, National Bank of Commerce.

Q. And did you have a check register for the Peoples Bank account? [4717]

A. Yes, I did.

Q. And from what account were your fees normally paid?

A. From the Peoples Bank account.

Q. Handing you Plaintiff's Exhibit 274, I will ask you if this is the Arctic Gardens check register for the Peoples Bank Account that you have mentioned?

A. Yes, this is the "easy to deduct" check register.

Q. Now, examining that check register, Mr. Taylor, for the month of November, 1948, do you find any reference in the check register to the amount that you closed out of the National Bank of Com-

(Testimony of L. Hicks Taylor.)

merce account? A. Yes, I do.

Q. And will you read the entries made in this check register concerning that matter?

A. It is dated the 21st day of November, 1948, a check made out to L. Hicks Taylor. In the explanation column, September and October fees, National Bank of Commerce, $64.57, check on the Peoples National Bank for $35.43, making the fee for the two months of $100.

Q. And what was the fee that you were receiving, please, per month from Arctic Gardens at the time? A. $50 per month. [4718]

Q. Concerning the check of $773.21, interest, which I think you testified, did you not, that you gave to both Mr. Forster and Mr. Brehm, at the end of 1945, I think it was, what was said, if anything, at that time—at the time that you gave them these checks as to the use being made of the checks?

A. My recollection is that they were to be applied on the interest payments at the various banks that had borrowings. Mr. Brehm had borrowings through the National Bank of Commerce, Queen Anne Branch, and Mr. Forster at the Peoples Bank.

Q. Where were these checks delivered to these gentlemen?

A. It is my recollection it was in my office, although I am not positive.

Q. And what was the date?

A. The last day of the year, I believe.

Q. Now, what was your understanding as to

(Testimony of L. Hicks Taylor.)

whether money borrowed by Mr. Forster and Mr. Brehm was for the benefit of Arctic Gardens?

Mr. Griffin: Object to the form of that question.

Q. (By Mr. LeSourd continuing): Well, what did you know about that matter, or what had you been told? [4719]

A. Mr. Brehm and Mr. Forster contributed $35,000 in loans to the $35,000 each in loans to the Arctic Gardens.

Q. Had you been informed of anything about the source of that money?

A. I understood in each case it was borrowed at the various banks.

Q. Now, if the $773.21 paid to each of them by these checks had been used to pay the interest on the loans at the bank made for the purpose of Arctic Gardens, would there have been any taxable income to Mr. Forster?

A. There would not.

Q. Now, referring to Simonson and Forster, Mr. Taylor, Mr. Griffin, I believe, asked you whether the $100 monthly payments to Mr. Forster would not be income to Mr. Forster even though repaid in the next year, and I believe you answered "no".

Will you tell us where a person receives money from a corporation and is obligated to repay it, is it income to him? A. It is not.

Q. Now, under the information which was given to you at the end of 1948, which you reflected in your adjustment, was Mr. Forster obligated to repay the money he had received? [4720]

(Testimony of L. Hicks Taylor.)

A. No, not in my opinion, he wasn't.

Q. Was he obligated to repay that money?

A. That was the understanding between Mr. Forster and Mr. Simonson.

Mr. Griffin: May the previous answer to that same question be read, if the Court please?

The Court: The original question and answer?

Mr. Griffin: Yes, your Honor.

The Court: Mr. Reporter, read the question and answer.

(Whereupon, the following was read by the reporter:

"Q. Now, under the information which was given to you at the end of 1948, which you reflected in your adjustment, was Mr. Forster obligated to repay the money he had received?

A. No, not in my opinion, he wasn't.")

The Witness: I misunderstood the question. I thought you said it was to be reported taxable.

Mr. LeSourd: Now, to clear this up:

Q. (By Mr. LeSourd): Under the information you received, what was the situation as to whether Mr. Forster was to repay this money? [4721]

A. I understood it was to be repaid.

Q. Now, with regard to the year 1949, of Simonson and Forster, before the trial, did you see your work sheet for 1949?

A. It is my recollection that we saw the 1939 worksheet, yes.

Q. 1939 or 1949?

A. 1949 worksheet, yes.

(Testimony of L. Hicks Taylor.)

Q. When was that?

A. Well, it seems to me it was before the trial started.

Q. And do you recall where it was?

A. I believe in the building here.

Q. And who was with you at the time?

A. You and Mr. Cox were with me, as I remember.

Q. Have you been able to find that worksheet, since? A. No, I have not seen it since.

Q. Was there someone from the Government there in the room at the time?

A. It is my recollection there was, yes.

Q. Now, did that 1949 worksheet have any adjustment for these payments to Simonson and Forster?

A. Yes; it restored the $1200 to profit. My recollection is that it was either placed to the debit [4722] of equipment, or notes receivable. I cannot remember definitely.

Q. Now, in the cross-examination, I believe, of Mr. Obenour, with regard to the matter, I believe you found in the books that the adjustment on the Simonson and Forster books was made in the wage column; would it make any difference whether it was in the wage column, or the expense column?

A. It wouldn't make any difference in the over-all picture.

Q. When you say "over-all picture"——

A. (Interposing): That is, the expenses would

(Testimony of L. Hicks Taylor.)

have been reduced by $1200 regardless of what column it happened to be placed in.

Q. Now, there has been this testimony about the March and April, 1949, Issaquah Creamery Company statements where you showed a minus inventory in order, as you testified, I believe, to indicate the possibility of error in the information given to you. Now, do you recall whether or not you discussed this matter with Mr. Erickson at that time?

A. Well, it is my recollection that some discussion was had about it.

Q. Did this adjustment continue after April, 1949? A. Not to my recollection, no. [4723]

Q. Did this adjustment have any effect upon income tax?

A. Absolutely none. It was only descriptive for the inter-monthly statements.

Q. Mr. Griffin asked you some questions about the reconciliation of accounts payable in connection with the charging of Mr. Forster's personal expenses to business expense.

Would a reconciliation of accounts payable have shown anything concerning these improper charges?

A. No, I don't believe that they could have possibly shown anything about them.

Q. Would a reconciliation of accounts receivable have shown anything with regard to these improper charges? A. No.

Q. Coming now to this 1949 year-end adjustment, Mr. Taylor——

Juror Number Seven: Your Honor, I wonder

(Testimony of L. Hicks Taylor.)

if we could have those boxes set down? It is kind of hard to look over and see Counsel.

(Whereupon, boxes were removed from a table by the Bailiff.)

The Court: Is that clear now?

Juror Number Seven: Yes. [4724]

Q. (By Mr. LeSourd continuing): There was a change in accounts payable, you testified, that was given to you by Mr. Erickson of $51,578.76. Was that entered in accounts payable in your ledger?

A. Yes.

Q. Can you find the place, handing you Exhibit 271, where that was entered?

A. It is included in a total of $98,616.29.

Q. Now, is that included in that one figure, or is it broken down among several figures?

A. Only in one figure.

Q. Was there an offsetting entry to that made in your ledger?

A. Yes, to the expense control account.

Q. And to what part of the expense control account?

A. It appears to have been entered under milk purchases.

Q. In the purchases?

A. Yes, in the purchases.

Q. And, on your work sheet, Plaintiff's Exhibit 259, was that—how was that entered?

A. It was included in the accounts payable.

Q. And what was the offsetting adjustment on the work sheet? A. Purchases.

(Testimony of L. Hicks Taylor.)

Q. Now, on the column in that work sheet 259 that contains this figure $51,578-and some cents, which you stated you wrote down and Mr. Erickson gave it to you, there are some other figures, I believe, that you testified to. Which of the figures in that column were given to you by Mr. Erickson?

A. Well, there was $10,000 to milk drafts.

Q. Now, stopping there for a moment, in what form was that given you by Mr. Erickson?

A. Mr. Erickson said there would be five thousand increase in November and five thousand increase in December, making $10,000 to milk drafts.

Q. All right, and which of the other figures were given to you?

A. And then the $51,578.76 in accounts payable.

Q. And how was that given to you?

A. In one amount.

Q. One amount; and what other figure, or figures?

A. Mr. Erickson said "Increase the inventory". The way he said it, I misunderstood him. He said [4726] "Increase inventory twenty-two", and I wrote in that column $32,978.70, or 90, and then the office called to my attention that that was ten thousand too high.

Q. Now, after you wrote that thirty-two thousand inventory figure in, did you do anything with your work sheet before Mr. Erickson caught your error?

A. Yes, I had worked it out with the thirty-two as the inventory.

(Testimony of L. Hicks Taylor.)

Q. And it was at that time that he told you that there was—that you had misunderstood him on inventory?

A. Yes, he called my attention to it.

Q. Now, the other figures in that adjustment column, I believe you testified to, were simply totals?

A. It appears from those that there were probably a cumulation of a number of figures probably for income tax, or for some other type of statement.

Q. Also, Mr. Taylor, on cross-examination you were asked concerning your testimony that you had examined the sales of 1948 in connection with 1949. Did you examine these 1948 sales in connection with your—in connection with the original figures that you were given on January 28, 1949, when you went out to— [4727] January 28, 1950—when you went out to Issaquah, or in connection with the revised figures given you by Mr. Erickson?

A. It is my recollection that I—after I received these figures, then I had both taxes, the 1948 tax return, before me, and made the comparison.

Q. When you say "received the figures", which—

A. (Interposing) I mean, after I returned to my office, I—after I had made this adjustment, I took out the 1948 Issaquah Creamery tax return, in preparing the 1949, and made the comparison.

Q. By "this adjustment", you mean the figures Mr. Erickson gave you? A. Yes.

Q. Mr. Taylor, what were the circumstances giv-

(Testimony of L. Hicks Taylor.)

ing rise to the failure to report all of your own income in the years 1940 through 1948?

A. Well, I was working very long hours, practically all my working hours, in my business, and I had a record there to post all of my income, but I did not report them in their entirety, because of the complication, I had various types of income, checks of other peoples, and I did not get them segregated sufficiently to make a proper tax return.

Q. Now, there was testimony—cross-examination—about your conferences in Mr. Kachlein's office [4728] on September 13, 1950, and October 27, 1950.

Now, in either of these conferences, Mr. Taylor, did Mr. Kachlein tell you that he had on April 26, 1950, stated to a Revenue Agent that if there were errors in Mr. Forster's returns, they were due to your sloppy accounting?

Mr. Griffin: Objected to as not redirect examination.

Mr. LeSourd: Counsel brought the matter up. He brought out at length, your Honor, those meetings in an attempt to indicate that Mr. Taylor knew everything that was gone over, and willingly dropped this matter.

The Court: Well, objection overruled.

A. He did not mention it.

Q. (By Mr. LeSourd): And did he, in those meetings, say anything to you about statements made on August 29, 1950, by him to a Revenue

(Testimony of L. Hicks Taylor.)

Agent that you were responsible for any irregularities of Mr. Forster?

Mr. Griffin: I object. A. No.

The Court: Just a moment.

Mr. Griffin: I object. Not redirect examination. The question was asked on cross-examination.

Mr. LeSourd: It goes to the——

Mr. Griffin: (Interposing) No such question was asked on his own examination on redirect.

Mr. LeSourd: Certainly no question was asked on direct.

The Court: Objection overruled.

A. No, he did not. * * * * * [4730]

L. HICKS TAYLOR

upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, testified as follows:

Redirect Examination

Q. (By Mr. LeSourd): Mr. Taylor, earlier in your examination you testified that you had first learned that the Government was considering the possibility of action against you in this case by a letter from the Agents which you said you thought you got the latter part of 1950, or the first part of 1951.

The Clerk: Defendants' Exhibit A-127 marked for identification.

(Defendants' Exhibit A-127 marked for identification.)

Q. (By Mr. LeSourd continuing): Handing you

(Testimony of L. Hicks Taylor.)

Defendants' Exhibit A-127 for identification, I will ask you what that is?

A. This is a letter, a registered letter, from the Treasury Department, signed by Mr. Ira Eppler as Special Agent, and dated October 12, 1950.

Q. Now, when did you receive that letter, do you know? [4746]

A. By glancing at the letter, it refreshes my recollection that a notice of a registered letter was at my home when we returned from our vacation on October 25th, and I just don't recollect whether I picked it up the next day, or a couple of days later. I am not quite positive of the date of picking it up at the post office.

(Whereupon, there was a brief pause.)

Mr. LeSourd: I will offer Defendants' Exhibit A-127.

Mr. Griffin: Objected to as incompetent, irrelevant, and immaterial, and hearsay. It was only used to refresh recollection, and did refresh recollection.

Mr. LeSourd: On the contrary, your Honor, in cross-examination of this witness, Mr. Griffin went at length into all of the circumstances surrounding this meeting at the end of October, between Mr. Taylor and Mr. Kachlein, and when Mr. Taylor was informed of the possibility that the Government might consider charges against him.

I think we are entitled to introduce this letter to show those facts.

(Whereupon, there was a brief pause.)

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: It is not hearsay, of course, your Honor. [4747]

The Court: I will finish reading this.

Mr. LeSourd: Very well; I am sorry.

(Whereupon, there was a brief pause.)

The Court: I am inclined to sustain the objection, Mr. LeSourd.

Mr. LeSourd: Well, if your Honor please, it shows the information that was brought to the attention of this witness at the time.

The Court: I understand.

Mr. LeSourd: And we feel it is entirely proper as showing that in view of the cross-examination on this subject. It is a matter opened up by counsel for Mr. Forster.

The Court: Well, the other evidence might be admissible, but as a letter, I think it is subject to objection as hearsay. I don't know any—on any ground it might be admissible, Mr. LeSourd,——

Mr. LeSourd: (Interposing) Well,——

The Court: (Continuing) ——as not being hearsay, or an exception.

Mr. LeSourd: It is admissible, your Honor, on the ground that here is the information brought to the attention of Mr. Taylor at that time, and as showing what he was advised at the time. That certainly is not hearsay. [4748]

The Court: Well, of course, we are not presented now with the question as to the information received, but the admission of the letter itself is, I

(Testimony of L. Hicks Taylor.)

think, subject to objection. I would sustain the objection at this time.

If you wish to urge it further, I will hear further from you at recess.

Mr. LeSourd: That is all my examination.

The Court: Mr. Keesling?

Mr. Keesling: No further questions.

The Court: Does the Government have anything?

Mr. Obenour: No further questions.

Mr. Griffin: I have one on one exhibit.

May I see Exhibit 122, please?

The Clerk: 122?

Mr. Griffin: 122.

(Whereupon, document was handed to Mr. Griffin by the Clerk.)

Mr. Griffin: It is my error; I am sorry. A-122.

(Whereupon, there was a brief pause.)

Mr. Griffin: That is the bonus payments.

(Whereupon, exhibit was handed to Mr. Griffin by the Clerk.)

Mr. Griffin: And would you mark these for identification as one exhibit? [4749]

The Clerk: Defendants' Exhibit A-128 marked for identification; as one exhibit?

Mr. Griffin: If you please.

The Clerk: Defendants' Exhibit A-128 marked for identification.

(Defendants' Exhibit A-128 marked for identification.)

(Testimony of L. Hicks Taylor.)

Recross Examination

Q. (By Mr. Griffin): Mr. Taylor, A-122, introduced in evidence as Finstad and Utgard bonus payments, do you recognize that document as such; do you?

Mr. LeSourd: Objected to, your Honor. He testified originally he didn't recognize the document. It was introduced just to show the figure which Mr. Griffin was supposedly leading.

The Court: Is the question directed to whether he recognizes the exhibit as an exhibit, or——

Mr. Griffin: (Interposing) No, as the bonus payments. A. I do not.

Q. (By Mr. Griffin): Handing you Exhibit A-128, can you identify those?

A. I am sorry; I cannot. [4750]

Q. However, Mr. LeSourd examined you, as you will recall, with reference to A-122 and placed it in evidence; do you recall that?

A. Yes, I remember it.

Q. Your testimony in regard to the bonus payments was that you used in your computations $10,000, placing it somewhere and charging it off in the Finstad and Utgard statement—tax return—to bonus payments, wasn't it?

A. It was set up as Accounts Payable.

Q. Yes; the exhibit A-122, Mr. Taylor——

Mr. Griffin: Strike that.

Q. (By Mr. Griffin continuing): You also testified that bonus payments were made to a large

(Testimony of L. Hicks Taylor.)

number of people by Finstad and Utgard, is that correct? A. As I recollect, yes.

Q. And you referred to both Skagit and Snohomish Counties, I believe, is that right?

Mr. LeSourd: I object to that as an improper quotation. There was no testimony to that effect.

The Court: If that isn't correct, the witness may so indicate. Objection overruled.

A. It is my recollection that I said at Stanwood and Mt. Vernon, did I not? [4751]

Q. (By Mr. Griffin): You also said Snohomish County, did you not?

A. I don't just recollect. I may have.

Q. I will ask you if it is not a fact that A-122 shows the individual name and the amount paid to each person, or customer, whichever it may be,—anyway, to each individual,—entitled to a bonus payment?

A. That would appear to be the case, yes.

Q. And the total amount was $2,139?

A. On that sheet, yes.

Q. Were there any other bonus payments other than shown on this sheet, Exhibit A-122, for the year 1947? A. I do not know.

Q. Did you check the check register to ascertain what bonus payments were made?

A. I did not.

Q. You simply used $10,000 irrespective of what the bonus payments were?

A. 1944 was the basis of establishing that their bonus payments were over ten thousand dollars.

(Testimony of L. Hicks Taylor.)

Q. In 1944, Mr. Taylor?

A. I believe that is correct.

Q. You were familiar, then, with the bonus [4752] payments and amounts, were you?

A. Only by what I was shown by Mr. Egeness.

Q. What were they in 1945?

A. I don't know.

Q. Would you say they were in excess of $2,078.65?

A. I would assume they were, yes.

Q. And do you know what they were in 1946?

A. I do not.

Q. Would you say they were in excess of $2,088.08?

A. I would assume they were a great deal more than that.

Q. And do you know what they were in 1949?

A. I do not.

Q. Would you say they were in excess of $2,633.15?

A. I would assume they were a great deal more than that.

Mr. Griffin: That is all.

Mr. LeSourd: One additional question on that last, your Honor.

Re-Redirect Examination

Q. (By Mr. LeSourd): Mr. Taylor, in answer to Mr. Griffin's question whether this was a—whether the exhibits [4753] showed a list of each person entitled to a bonus payment, you said, "yes":

(Testimony of L. Hicks Taylor.)

were you referring to each person on the list, or did you mean by that, that that included the list of everyone that received a bonus payment?

A. No, I did not mean that. On the list that was before me, on the exhibit before me, it showed eight names, as I remember it.

Q. Did you participate in making those bonus payments?

A. I had no connection with it, no.

Q. Were you familiar with exactly the number of people that did receive bonus payments?

A. No, I was not.

Mr. LeSourd: That is all.

The Court: That is all, Mr. Taylor.

The Witness: Thank you.

(Witness withdrew.)

Mr. LeSourd: We will call Mr. Jack Taylor.

J. L. TAYLOR

upon being called as a witness for and on behalf of the Defendant Taylor, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: Will you state your full name, please?

The Witness: J. L. Taylor, 102 North Broadway.

Q. (By Mr. LeSourd): Would you state your name, please? A. J. L. Taylor.

Q. Where do you live?

A. 102 North Broadway.

(Testimony of J. L. Taylor.)

Q. Are you related to Mr. Hicks Taylor, the defendant in this case?

A. I am a brother.

Q. In the summer of 1950, Mr. Taylor, while Mr. Hicks Taylor was at McNeil Island, did you have any conversation with Mr. Hans Forster with regard to the matter of Mr. Hicks Taylor's accounting license?

A. Yes, I told him I contemplated getting a petition out to get his license back as soon as he returned from the Island; that I had been called upon by a couple of men in that respect.

Q. Where were—where was this conversation, [4755] Mr. Taylor?

A. At the Alpine Dairy on Rainier Avenue.

Q. How did you happen to have this conversation?

A. I went out to get a load of ice cream. I used to get ice cream and put it in my locker from there, and Mr. Forster, while I was paying the bill, came out and took me into his private office, and we had our conversation in there.

Q. What was the—can you relate that conversation as closely as possible?

A. Well, I told him I was contemplating getting out a petition to get his license returned, and all his rights, and so forth, so that he could practice as soon as he came back, and Mr. Forster told me that his hands were tied, and about that time, the telephone *ran* and he is on the phone, oh, for about

(Testimony of J. L. Taylor.)

ten minutes, and I got up and got my ice cream and went out.

Q. Can you fix the date of that conference?

A. Well, it was, I would say, between the 15th of August and the 21st. It probably was on a Thursday or a Friday.

Q. What year is that? A. 1950.

Q. It was on a Thursday or a Friday?

A. I would think so. It was on a week-end, [4756] generally, that I picked up the ice cream and put it in my locker.

Q. Handing you Defendants' Exhibits A-77 and A-78 for identification, do these in any way assist you to fix the date of that meeting?

A. Yes; that is about as near as I would like to come to it, a Thursday or a Friday, though.

Q. And what would be that date in 1950, in August, 1950, approximately?

A. Well, the 21st was Monday; so, Thursday—I have an idea it was Thursday—Thursday would—let's see, maybe you can figure better than I can.

Q. Well, if the 21st is Monday, I would say that Thursday is about the 17th of August.

A. 17th.

Q. Now, what next happened after that conversation with regard to this matter?

A. We received a letter from my brother telling us to not go ahead with whatever we had planned; that Mr.—as I remember, Mr. Kachlein had contacted him and didn't want us to go through with it.

(Testimony of J. L. Taylor.)

Q. When did you receive that letter, do you recall?

A. That was on the 21st. Let's see, well, that was dated the 21st. We probably received that the 22d. [4757]

Mr. LeSourd: That is all.

Mr. Obenour: No questions.

Mr. Griffin: No questions.

Mr. Keesling: No questions.

Mr. LeSourd: That is all, Mr. Taylor.

(Witness excused.)

Mr. LeSourd: I will call Mrs. Taylor.)

* * * * * [4758]

HANS FORSTER

upon being recalled as a witness for and on behalf of the Defendant Forster, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Griffin): Mr. Forster, this is what in a trial we call Rebuttal, and the questions that I ask you, I want, if possible, under our procedure, answers of "yes" or "no".

Mr. Forster, at the time of the split-off of the Alpine Dairy from Issaquah Creamery, did you suggest to Mr. Taylor in substance or effect that Mr. Erickson could handle the journals at Issaquah? A. No, I didn't, sir.

Q. Did you state, in substance or effect, that that would save money on Taylor?

(Testimony of Hans Forster.)

A. No, I didn't.

Q. With reference to the Renton Ice and Ice Cream Company, did Mr. Taylor at the first corporate meeting of the Renton Ice and Ice Cream Company, or at any other time, tell you—direct you—or suggest that you should deposit the checks that you would receive from out the salary of the other incorporators of the Renton Ice and Ice Cream Company [4842] in the Alpine Dairy account?

A. No, he didn't.

Q. Did Mr. Taylor say in substance or effect that he wanted that done so that the checks and the proceeds received by you would not show on the tax returns? A. No, he didn't.

Q. With reference to Simonson and Forster, did Mr. Taylor ever ask you if the $100 a month you received, being $1200 a year, did he ever ask you in substance or effect, if that was salary?

A. No, he didn't.

Q. Did Mr. Taylor ever suggest to you, in substance or effect, that you should pay back to either Simonson, or Simonson and Forster, this $100 a month, or $1200 a year?

A. No, he didn't.

Q. Did you say to Mr. Taylor in substance or effect, that you could not see why you should pay tax upon those items, when the $100 a month, or $1200 a year, was being withdrawn from capital?

A. No, I didn't.

(Testimony of Hans Forster.)

Q. Did Mr. Taylor ever inquire about that $1200 at all, to you?

A. He didn't, sir. [4843]

Q. Did you ever hear, until Mr. Taylor took the witness stand, that he had charged those items, or something in regard to them, off to equipment?

A. No, I didn't know about it before.

Q. Did Mr. Taylor ever discuss with you the tax items at Simonson and Forster, at all?

A. No, he never did.

Q. The Alpine Ice Cream Company——

A. (Interposing) No.

Q. (Continuing) ——I am referring to now. At the time of the formation of the Alpine Ice Cream Company, or at any time, did you say to Mr. Taylor that Mr. Erickson would keep the books?

A. No, I never did.

Q. Did Mr. Taylor ask you at the time of the formation of the company, or about that time, whether you wanted him to continue on?

A. No, he never asked me that question.

Q. And did you say, in substance or effect, "No, Erickson would handle the books at Issaquah"?

A. No, sir.

Q. Did you consider Daisy Ice Cream Company, which became Alpine Ice Cream Company, a part of the Alpine Dairy operations?

A. Yes, I did. [4844]

Q. Now, in regard to the year-end matter of 1949, in—on or about the last Saturday in January, 1950, or at any time thereafter, did Mr. Taylor

(Testimony of Hans Forster.)

phone you and ask if he should proceed with the books? A. No, he didn't.

Q. Did Mr. Taylor at about that time, or at any time, phone you as to whether changes were to be made, and did you tell him to call Erickson, that there would be some changes?

A. No, I didn't.

Q. Did you ever have a telephone conversation with Mr. Taylor in regard to that matter at all?

A. No, I never did.

Q. Did you have any conversation with Mr. Taylor in regard to that year-end matter after your conversation with him on or about January 28, 1950, and I am referring to the last Saturday in January, whatever it was? A. No, sir.

Q. Mr. Taylor testified that when the income tax return for—was ready for the year 1949, which would be some time in March, 1950, that he called you to bring in the check, advising you the amount of the check, and to sign the tax return, and at that time, did Mr. Taylor show you any of his work sheets, whether [4845] in evidence or not, and explain the—what he says was a 51 thousand dollar change in accounts payable? A. No, sir.

Q. Did Mr. Taylor at that time say to you in substance or effect, or at any time, that you and Mr. Erickson will have to substantiate the charge and take care of it?

A. No, he never did.

Q. Did he discuss the matter with you at all?

A. No, he didn't.

(Testimony of Hans Forster.)

Q. Aside from your observing these monthly visits at Issaquah, Mr. Taylor working upon what has been referred to here as work sheets, did he ever show you the work sheets and explain them to you? A. No, sir.

Q. Did Mr. Taylor ever explain to you or discuss with you these changes in inventory that have been testified to? A. No, sir.

Q. Did he ever discuss with you at any time, any changes in inventory? A. No, sir.

Q. Did he ever discuss with you at that time, any adjustments of accounts payable?

A. No, sir. [4846]

Q. Did he ever discuss with you at any time the matter of depreciation, the way he handled it?

A. No.

Q. Did he ever discuss with you the matter of a negative inventory? A. No, sir.

Q. Did you know that he had, or was supposed to have, a negative inventory? A. No, sir.

Q. Did Mr. Taylor ever discuss with you the matter of negative cash? A. No, sir.

Q. Did Mr. Taylor ever advise you at any time how he was keeping the books and records?

A. No, sir.

Q. In regard to the financial statements submitted to banks, did Mr. Taylor usually go over those statements with you before they were submitted to the banks?

Mr. Moriarty: Objected to as not proper re-

(Testimony of Hans Forster.)

buttal, it has been all gone over time and time again in the case in chief.

The Court: This is rebuttal to Mr. Taylor's testimony following Mr. Forster's case, and because of the length of time that has expired, I am not going to [4847] sustain the objection.

Mr. Moriarty: It was part of Mr. Forster's case in chief, that he never saw the books, or looked at them, and that Mr. Taylor didn't present these matters to him, and presented the bank statements without Mr. Forster ever seeing them.

The Court: This answer—the question and answer will be only related insofar as it refers to the testimony of Mr. Taylor and Mr. Erickson.

Mr. Griffin: Correct, and this is directed only to the testimony of Mr. Taylor.

Q. (By Mr. Griffin continuing): Repeating the question:

Did Mr. Taylor go over the financial statements with you before he submitted them to the banks?

A. No, sir.

Q. Did you ever know until this investigation started, or the time of this trial, that Mr. Taylor would give you correct financial statements and the bank a different financial statement for the same period? A. No, sir.

Mr. LeSourd: Objected to, your Honor.

Mr. Griffin: Just a moment.

Mr. LeSourd: Objected to as argumentative and an improper statement of the facts. [4848]

(Testimony of Hans Forster.)

The Court: I don't recollect that there was any testimony directly to——

Mr. LeSourd: (Interposing) That is right. He is going back to his own cross-examination of Taylor, not Taylor's testimony on direct.

The Court: The only part I recollect, Mr. Griffin, relates possibly to the transactions of the Stanwood Bank.

Mr. Griffin: Yes, December 31, 1935.

The Court: Wasn't that on cross-examination?

Mr. Griffin: Yes, but Mr. Taylor came back and explained in detail upon redirect as to what the banks wanted, and why he did it. He even almost delivered a lecture on it.

The Court: Well, I will again confine this question to the—or, answer, rather, and the question to the transactions relating to financial statements submitted then to the banks in the early '30s. I believe it was the Stanwood Bank.

Mr. Griffin: His testimony also applied to the statement submitted to the Peoples Bank.

Mr. LeSourd: There is other evidence of duplicate financial statements. The only ones in the '30s were fully explained already, if the Court please.

Mr. Griffin: Mr. Taylor explained in detail [4849] what the purposes of the financial statements to the banks were, and I asked impeaching questions for the witness we will have, Mr. Ellis.

Mr. LeSourd: My original objection is the vice in the assumption that this is something applying

(Testimony of Hans Forster.)
to all these financial statements, which certainly is not correct.

The Court: The question, as put, to the best of my recollection, would cover the incident of a transaction in the earlier years, rather than the later.

Mr. Griffin: All right, I am willing to limit it to that.

Q. (By Mr. Griffin): The question was, Mr. Forster:

As of——

Mr. LeSourd: (Interposing) Just a moment. I would like to make another objection, if your Honor please. This is further improper rebuttal in that the evidence concerning those earlier years was not relevant to the issues of the case. It was admitted by the Court, as I understand it, on the theory that it in some way affected the credibility, or might affect the credibility, of Mr. Taylor, which, of course, we feel it did not in any way, and as I understand, [4850] the law——

The Court: (Interposing) Excuse me a moment, on that; or, of course, to affect the credibility of Mr. Forster.

Mr. LeSourd: Well, if that is the basis——

The Court: (Interposing) When credibility is attacked, it is likewise to bring out evidence, of course, that may rehabilitate it.

Mr. LeSourd: Well, our understanding of the law is, your Honor, that in such a case, no rebuttal evidence is proper, and that he is bound by the

(Testimony of Hans Forster.)

answers of the witness, and we will object on that ground.

The Court: Objection overruled.

Q. (By Mr. Griffin continuing): The question is, Mr. Forster:

Dealing now with the—particularly with the statements of 1935 and 1937 in evidence, did you know that Mr. Taylor was giving one financial statement to the banks and a different statement to you covering the same period of time?

A. No, I didn't.

Mr. LeSourd: Our objection stands to this question, also.

The Court: Yes, it is understood. Your answer was? [4851]

The Witness: I didn't know.

Q. (By Mr. Griffin): Did Mr. Taylor attend with you several meetings with the bankers, Peoples Bank, in connection with the application for the loan and a loan eventually made, a building fund of the Alpine Ice Cream Company?

Mr. Moriarty: Objected to as not proper rebuttal.

The Court: This relates to the——

Mr. Griffin: (Interposing) Testimony of Mr. Taylor that he only attended one meeting.

The Court: Objection overruled.

A. Yes, I attended several meetings with Mr. Taylor with officers of the Peoples Bank.

Mr. LeSourd: I will object to the statement he attended only one meeting. That is contrary to his testimony. He attended one meeting on a two hun-

(Testimony of Hans Forster.)
dred thousand dollar loan, and other meetings on other loans on other amounts.

The Court: The statements of counsel again, as to what the evidence is, are not to be considered by the Jury as being evidence.

They must rely upon their own recollection.

Now, the statement was made and the answer in response and an objection made. It might be well to [4852] restate the question now, Mr. Griffin.

Mr. Griffin: Thank you.

Q. (By Mr. Griffin): Did Mr. Taylor attend several meetings with the various officials of the Peoples Bank in connection with the proposed loan referred to here as the building loan for the Alpine Ice Cream Company?

Mr. Moriarty: Objected to as repetitious and not proper rebuttal.

The Court: All right, why?

Mr. Moriarty: For the simple reason that this party has testified to everything that Mr. Taylor did on direct, and Mr. Taylor has testified what he did on direct, and the number of times that Mr. Taylor was present at meetings, and this is an attempt to revise what Mr. Taylor said in opposition to Mr. Forster. The Jury is to weigh that, if your Honor please. Said twice doesn't add to it.

The Court: Many things have been said many more times than that. Members of the Jury: of course, the testimony is for your consideration, and the repetition of a—there may be some repetition. It may be because the Court doesn't recollect

(Testimony of Hans Forster.)

whether or not it has been received, and I am not trying to permit repetitious testimony. [4853]

However, in this case, Mr. Taylor testified as to matters which were admitted as to credibility of the defense, and also the testimony of Mr. Forster. As part of that testimony, one of the issues involved was meetings, and the Court believes it is permissible in this type of rebuttal to meet that, and to confine the issue as we are seeking to. You may proceed.

Q. (By Mr. Griffin continuing): Do you have the question? A. Yes; he did.

Q. When did you first learn that the books and records in the possession of Mr. Taylor over these years had been by Mr. Taylor left at the Issaquah Creamery?

A. After he delivered them to Issaquah.

Q. Do you recall whether that was before or after your last visit or trip with Mr. Taylor and Mr. Erickson to Finstad and Utgard?

A. It was after we made the trip to Conway and before Mr. Taylor left for McNeil Island

Q. When did you first learn that changes in accounts payable, milk drafts, and the inventory had been made in the books—the journals—of Mr. Erickson?

Mr. Moriarty: Objected to as not proper rebuttal. If that hasn't been testified to ten times on direct, I miss my guess. [4854]

Mr. Griffin: You miss it on this witness.

Mr. Moriarty: Then it is nine times.

(Testimony of Hans Forster.)

The Court: Well, again the Court has to consider this in connection with the testimony that was not in issue at all at the time Mr. Forster first took the stand. Objection overruled.

A. The first time I learned about it is when after the investigation started, and Mr. Gorans, or this accounting firm, checked over the books at Issaquah and that night, Mr. Erickson came up to the house, and that is the first time he told me about the changes he made, and he said——

Q. (By Mr. Griffin interposing): Just a moment. And is that the first time you knew about it?

A. That is right, yes.

Q. With reference to Exhibit 181, which is a Klopfenstein check, dated August, 1947, at the time that check was issued, where were you?

A. I was in Switzerland, visiting my parents.

Mr. Moriarty: There has been no issue on that.

The Court: I am inclined to sustain that objection.

Mr. Moriarty: And I move the answer be stricken. It is an attempt to re-emphasize testimony. Mr. [4855] Erickson testified he was in Switzerland.

The Court: I am inclined to sustain the objection.

Mr. Moriarty: It is just an attempt to get a story before the Jury.

Mr. Griffin: I may say, if it please the Court, that I think this will be the shortest rebuttal that one could have in a three months' case, and it

(Testimony of Hans Forster.)

would be over now, except for those kind of statements.

Mr. Moriarty: At the same time, we should follow the——

Mr. Griffin: (Interposing) The question was asked, due to the question of Mr. Maxwell, with whom, I understand, Mr. Moriarty is associated.

Mr. Moriarty: That is correct.

Mr. Griffin: (Continuing) Seated back in his chair, "As a matter of fact, didn't Mr. Forster instruct you to enter this invoice in the books?"

Mr. Erickson has testified he thinks at that time Mr. Forster was in Switzerland. I established by this witness, if I may, that at that time he was in Switzerland, and it would have been a long conversation overseas.

Mr. Moriarty: If you asked that question, if he gave the instructions, I think it might be stretched [4856] to proper rebuttal. Whether he was in Switzerland or not, is beside the point.

Mr. Griffin: I wait the Court's ruling.

The Court: The question has been answered, and the Jury has heard argument of counsel.

You may proceed.

Q. (By Mr. Griffin): Mr. Forster, at these lunches at your home in Issaquah on these Saturdays when Mr. Taylor was out there over the years, did you discuss business with Mr. Taylor?

Mr. LeSourd: Objected to as improper rebuttal.

Mr. Moriarty: Same objection.

The Court: Objection sustained.

(Testimony of Hans Forster.)

Mr. Griffin: May I inquire why, if the Court please?

The Court: Is it preliminary? It might be.

Mr. Griffin: No, it is not. It is my last question. Mr. Taylor testified that they never discussed business at lunch.

The Court: I think I recall Mr. Forster testifying, however, as to their meetings at lunch.

Mr. Griffin: He did, but——

The Court: (Interposing) And I think to permit, the issue having been gone into, it is not a [4857] subject for rebuttal at this time.

Mr. Moriarty: It is not material, anyway, whether they discussed business at lunch.

The Court: The Court has ruled.

Mr. Griffin: I accept the Court's ruling.

That is all.

Cross Examination

Q. (By Mr. Moriarty): Mr. FOSter——

Mr. Griffin: (Interposing) The name is Mr. FORSter.

Q. (By Mr. Moriarty continuing): ——did you at any time during your entire business connection with these various business enterprises ever look at an inventory?

A. Do you mean at the amount?

Q. At an inventory?

A. Well, I knew what—I seen some of the inventory in the warehouses. I never counted it. I never helped make up the inventory, if that is what you mean, sir.

(Testimony of Hans Forster.)

Q. After it was made up, did you ever inspect it at any time? A. No.

Q. Was that because you had the inventory in your [4858] head and didn't need to look at the statement? A. No, I didn't.

Q. Did you at any time look at a bank statement that you signed?

Mr. Griffin: Objected to as not——

Mr. Moriarty: (Interposing) During the period that you have——

Mr. Griffin: (Continuing) Objected to as not recross; gone into with the witness and his signatures on cross-examination as to each statement.

Mr. Moriarty: This is proper cross-examination.

The Court: Objection overruled.

Q. (By Mr. Moriarty continuing): Answer the question, please.

A. What do you mean by "bank statement"?

Q. The bank statement that you answered the question by Mr. Griffin on.

A. You mean my financial statements?

Q. Your financial statements, yes.

A. The only time I looked at it after Mr. Taylor and myself gave it to the bank and they asked me questions about it. That is when I looked at it. I didn't look at it before. I didn't see it until Mr. Taylor took me to the bank and the bank called me in [4859] and we go over it, and if there was something they didn't understand and if they couldn't figure it out for me, what the amount was, or what the deal was, I called Mr. Taylor in.

(Testimony of Hans Forster.)

Q. You were never there alone with the bank statement without the assistance and help of Mr. Taylor, was that your answer?

Mr. Griffin: I submit that was not the answer. I object to the form of the question.

The Court: Objection overruled.

Mr. Moriarty: His answer was——

The Court: (Interposing) I overruled the objection.

Q. (By Mr. Moriarty continuing) You may answer the question.

A. I think we probably discussed some of the financial statements in the bank without Mr. Taylor being there, yes.

Q. Did you ever look at the totals of each bank statement that was furnished to the bank?

A. I think I probably have looked at the net worth. I don't think I ever added any of them up.

Mr. Moriarty: That is all.

Cross Examination

Q. (By Mr. LeSourd): Mr. Forster, in connection with the 1949 Issaquah return which you previously testified you objected to the profit figures shown by Mr. Taylor, is it your testimony you signed the income tax return for that year without even inquiring as to whether any changes or mistakes—changes had been made or mistakes found?

Mr. Griffin: I object to that as not recross. Practically the specific question was asked on cross-examination in regard to that.

(Testimony of Hans Forster.)

Mr. LeSourd: Your Honor, he testified a few minutes ago that he signed this return for this year without any further conversation. I believe I am entitled to ask this question.

The Court: The question was, did he show any work sheets or changes relative to the change in the accounts payable?

Mr. LeSourd: Well, also, whether he had any discussions at the time, your Honor.

The Court: I think he said he never discussed it at all.

Mr. LeSourd: And that is what my question is directed to.

The Court: Do you wish to restate the question? I think we may have lost it. [4861]

Mr. LeSourd: May it be read?

The Court: All right. Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. That is right.

Mr. LeSourd: That is all.

Mr. Keesling: No questions.

The Court: That is all, Mr. Forster.

(Witness excused.)

Mr. Brody: Mr. Strack? [4862]

PHILLIP A. STRACK

upon being recalled as a witness for and on behalf of the Defendant Forster, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Brody): Mr. Strack, as a bank officer, will you accept and rely on a financial statement submitted by a borrower if you knew that the borrower had outstanding for the same date a different statement?

Mr. LeSourd: Objected to.

Mr Moriarty: Objected to as not proper rebuttal, and hypothetical.

The Court: Objection sustained.

Mr. Brody: Your Honor, on Mr. Taylor's redirect examination, he expressed his views at length as to the purpose of financial statements and if rebuttal is not permitted as to those views, he becomes the final authority on that.

We want to ask the banker——

The Court: (Interposing) What are you relating this to?

Mr. Brody: I am relating it, your Honor, especially to the statement of February 28, 1948, concerning which there was testimony that $100,000 [4863] had been removed from accounts receivable into cash, and that that matter had been made clear, and that it was for the benefit of the bank and convenience of the bank examiners.

The Court: You are now asking for expert testimony, aren't you?

(Testimony of Phillip A. Strack.)

Mr. Moriarty: What they are doing, in effect, is elevating Mr. Taylor to a banker, and opposing him with hypothetical questions.

Mr. Brody: Mr. Taylor testified with respect to the statements in the '30s that different statements had different purposes; that credit purpose statements were different from income tax statements.

The Court: I will sustain the objection.

Q. (By Mr. Brody): Mr. Strack, did Mr. Taylor ever disclose to you that the statements which he submitted in any respect differed either from the books of the company involved, or any other outstanding statements?

Mr. Moriarty: Objected to as not proper rebuttal.

The Court: Objection overruled.

Mr. Moriarty: It can be "yes" or "no".

Mr. LeSourd: Just a moment. I will object, your Honor, as assuming something not in evidence. The [4864] testimony is that the statements were taken from the books.

The Court: The Court will overrule the objection.

Mr. Brody: May the question be read, your Honor?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. No, he did not.

Q. (By Mr. Brody): Now, Mr. Strack, will you

(Testimony of Phillip A. Strack.)

state, on a financial statement, what is meant by "cash"?

Mr. Moriarty: Objected to as not proper rebuttal.

Mr. Brody: Your Honor, this goes again to the statement of the cash on hand, and accounts receivable. I simply wish to ask this witness whether accounts receivable and cash may be interchanged.

Mr. Moriarty: You can't, on cross examination, bring out answers that you wish, and then present rebuttal witnesses.

The Court: Objection sustained.

Mr. Brody: I believe that this matter was gone into on redirect, your Honor. [4865]

Mr. LeSourd: Well, it was opened on cross-examination.

The Court: There is some restriction. We cannot open this up to further rebuttal. I feel it may open up further testimony and I don't propose to do that unless it is absolutely necessary.

Q. (By Mr. Brody): Mr. Strack, did you attend with Mr. Taylor more than one conference on the subject of a construction loan for the Alpine Ice Cream Company? A. Yes, I did.

Mr. Brody: No further questions.

Mr. Moriarty: No cross-examination.

Mr. LeSourd: No cross-examination.

Mr. Keesling: No cross-examination.

The Court: That is all, Mr. Strack.

(Witness excused.)

Mr. Brody: Mr. Donaldson. [4866]

FRANK B. DONALDSON

upon being recalled as a witness for and on behalf of the Defendant Forster, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Brody): Mr. Donaldson, did Hicks Taylor ever disclose to you that there was any difference between any financial statement which he submitted to the Peoples National Bank and the books and records of the company involved, or any other outstanding statement?

Mr. LeSourd: Same objection, your Honor, improper rebuttal. Assuming facts not shown.

The Court: The objection may show. Objection overruled. A. No, he did not.

Q. (By Mr. Brody): And did Hicks Taylor attend with you more than one meeting at the Peoples National Bank concerning a construction loan for the Alpine Ice Cream Company?

A. I was present at several discussions on that building account, yes.

Q. And at which Mr. Taylor was present?

A. Mr. Taylor, Mr. Forster and Mr. Strack.

Mr. Brody: 123, please.

(Whereupon, Exhibit was handed to Mr. Brody by the Clerk.)

Q. (By Mr. Brody): Mr. Donaldson, I will show you Plaintiff's Exhibit 123, a financial statement of Hans Forster dated February 29, 1948, in which the entry for cash on hand and in banks is listed as $293,848.11. Will you state, as a banker,

(Testimony of Frank B. Donaldson.)
what the significance is to you of the entry "cash on hand and in the banks"?

Mr. Moriarty: Just a moment.

Mr. LeSourd: Objected to.

Mr. Moriarty: Objected to as not proper rebuttal.

The Court: Objection sustained.

Mr. Brody: Once more I would like to bring to the Court's attention——

The Court: (Interposing) You may make your record.

Mr. Brody: Yes. That Mr. Taylor stated——

Mr. Moriarty: (Interposing) Just a moment, if your Honor please.

The Court: State the nature of the offer to the record.

Mr. Brody: The nature is that this was [4868] gone into on redirect on the testimony of Mr. Taylor and the significance of cash was explained and an opinion given as to the nature of cash on that sheet.

Mr. Moriarty: Same objection.

The Court: Objection overruled. I mean, sustained.

Mr. Brody: No further questions.

Cross Examination

Q. (By Mr. Moriarty): You are the same Mr. Donaldson that appeared before?

A. Yes, sir.

Mr. Moriarty: No further questions.

(Testimony of Frank B. Donaldson.)

Mr. LeSourd: I have no questions.

Mr. Keesling: No questions.

The Court: That is all, Mr. Donaldson.

(Witness excused.)

Mr. Brody: Mr. Ellis. [4869]

QUENTIN ELLIS

upon being called as a witness for and on behalf of the Defendant Forster, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: I want your full name, and the spelling of your name, please.

The Witness: Quentin Ellis, Q-u-e-n-t-i-n E-l-l-i-s (spelling).

Q. (By Mr. Brody): Will you state your name, Mr. Ellis? A. Quentin Ellis.

Q. And what is your address?

A. Home address?

Q. Yes.

A. 617 Whitworth Lane, Renton, Washington.

Q. And where are you employed?

A. Peoples National Bank.

Q. In what capacity?

A. I am assistant vice-president and manager of the credit department at the main office.

Q. Now, did you have occasion in the year 1948 to discuss with Mr. L. Hicks Taylor, a financial statement of Hans Forster?

Mr. LeSourd: Objected to as—— [4870]

(Testimony of Quentin Ellis.)

Mr. Moriarty: (Interposing) Objected to as not proper rebuttal.

Mr. LeSourd: This is a matter they opened up in cross-examination of Mr. Taylor.

They are bound by that, because it is not proper rebuttal to put on any further testimony.

Mr. Moriarty: And certainly this is no proper rebuttal of the Government's case, no matter what the quarrel is between the defendants.

The Court: I will concede that, Members of the Jury, and I will advise the Jury it is not rebuttal of the Government's case.

Mr. LeSourd: They are not entitled to do it by rebuttal, your Honor.

The Court: Directly not rebuttal of the Government's case. Now,——

Mr. Moriarty: (Interposing) We are trying to keep the record clear, if your Honor please.

The Court: I am, too, Mr. Moriarty.

Mr. Moriarty: Thank you.

The Court: Now, you may proceed.

Q. (By Mr. Brody continuing): Did you have occasion, Mr. *Donaldson,* in the year 1948, to discuss with Mr. L. Hicks Taylor a financial statement of Mr. Hans Forster? [4871] A. Yes, I did.

Mr. LeSourd: Objected to as improper rebuttal.

The Court: Objection overruled.

Q. (By Mr. Brody): And do you recall when that discussion took place?

Mr. LeSourd: Same objection.

(Testimony of Quentin Ellis.)

Mr. Moriarty: Same objection on the part of the Government.

The Court: There may be a continuing objection to this witness, if you wish.

Mr. Moriarty: We don't know what he will testify to and his name wasn't mentioned except in cross-examination, and Mr. Taylor didn't name Mr. Ellis, but was asked if he knew——

Mr. Cox: (Interposing) That is correct.

Mr. Moriarty: If I could ask if he knew Mr. Ellis and then bring the man in, it would be a new rule of evidence.

Mr. Griffin: I don't think that is a proper statement, so far as the Court is concerned, and we are not making new rules of evidence.

Mr. Moriarty: I didn't mean to make any statement disrespectful to the Court: I do say that you yourself asked the question if it was Mr. Ellis and Mr. [4872] Taylor said he didn't know or recall it was Mr. Ellis. Now, calling Mr. Ellis to rebut Mr. Taylor's testimony is completely out of order.

Mr. Griffin: May I address the Court, Mr. Moriarty?

Mr. Moriarty: You may, Mr. Griffin.

Mr. Griffin: On Mr. Taylor's testimony on conference with the credit officer at the Bank, I tied him to one man. He didn't know his name was Ellis. Then I placed impeaching questions, ground for impeaching, on A-2.

Mr. Cox: It is not in evidence.

Mr. LeSourd: If your Honor please, on the

(Testimony of Quentin Ellis.)

questions outside of the issue, Counsel is bound by the answer and we object. It is improper rebuttal, and ask to have a continuing objection to questions on this line.

The Court: I am going to excuse the Jury and have you make an offer of proof, and the Court will consider it. Ladies and Gentlemen of the Jury:

We will now take a short recess. It will probably be the regular recess for the afternoon session. The Court calls your attention to the admonition given you on similar occasions, and you may heed it on this occasion, if you will. [4873]

(Whereupon, the Jury retired from the courtroom.)

The Court: It is stipulated the Jury have left the courtroom?

I will ask Counsel to be a little cautious in comments, and you may proceed.

Mr. Brody: The offer of proof will be, in substance, that Mr. Ellis phoned Mr. Taylor May 5, 1948, and discussed with him the financial statement dated February 29, 1948, which had been submitted to the bank; that this was not a secret conference in any manner; that the specific items in the statement were discussed, and among them was the item of cash on hand, and in bank of $293,-848.11; that Taylor stated to the witness that of the cash on hand and in the banks a part of it was Hans's personal cash, and the remainder belongs to the Alpine Dairy operation.

(Testimony of Quentin Ellis.)

The Court: Now, do you happen to have a transcript there, the testimony of Mr. Taylor?

Mr. Brody: Yes, here is the testimony of Mr. Taylor, which your Honor may wish to examine, and Mr. Griffin specifically examined for purposes of impeachment as to whether or not the conversation was had, and whether or not the statement as to the amount of cash on hand was made. The direct questions are this:

"Question: I will ask you on May 5, 1948, at the [4874] Peoples National Bank in your explanation of the assets shown on the statement of February 28, 1948, you did not state to Mr. Ellis in substance and effect that the cash on hand and in banks of $293,000—of $293,848.11—was not part Alpine Dairy operation, and the remainder personal cash of Hans Forster?"

The answer: "No, I have no recollection of it."

"Question: Would you say that you did not so state on that occasion, on that date, the substance of that question and answer to Mr. Ellis?

"Answer: I would say that I did not say that."

Mr. Griffin: May I suggest the background of that was the witness's testimony that he had been called secretly to a conference at Peoples National Bank to discuss with the credit manager this particular financial statement with which we are dealing, upon which I laid my foundation for impeachment?

The Court: All right. Now, what are the objections? Mr. Moriarty?

(Testimony of Quentin Ellis.)

Mr. Moriarty: In the first place, our objection is that it is not proper rebuttal to the Government's case, and, secondly, it is my recollection [4875] of the evidence that Mr. Taylor did refer to a secret call to the bank. He didn't recall the party or name him, and then further, in cross-examination, these questions were propounded—about his secret call to the bank, the substance of it, and the cross-examination was about why it was secret, and along that line, as if there was some reason for the secrecy.

Now, if I can propound an impeaching question and then call a man who happens to be in the bank to answer the impeaching question, I don't see how that can be rebuttal to an issue.

Mr. Brody: Your Honor, as to the first point Mr. Moriarty raised——

The Court: (Interposing) I will hear Mr. LeSourd's objection.

Mr. LeSourd: Your Honor, in the first place, this is a subject not touched upon in the direct examination of Mr. Taylor. Your Honor saw fit in this case to permit the cross-examination of Mr. Griffin of Mr. Taylor to go beyond the scope of the direct examination. There are certain Circuits in the Country that permit that under certain circumstances. The Ninth Circuit is not one. But, those Circuits that do permit that for purposes only of testing credibility also provide where they do permit it, that the answer that is given, where you go beyond the scope of direct [4876] is binding on the

(Testimony of Quentin Ellis.)

cross-examination, and he cannot put on rebuttal evidence to contradict it.

That is the basis of our objection.

Mr. Brody: Your Honor, Mr. Moriarty's first objection is that it does not go to the Government's case. Of course, rebuttal at this time is matters raised in the case of the other two defendants, and not of the Government's case. Those matters were raised on our defense. As to whether or not Mr. Ellis is definitely not named on the time or place stated, I think they were quite clearly stated in the question. The question includes the elements and Mr. Taylor responded to it.

The Court: The objection, of course, that Mr. LeSourd raises is that the matter was brought out on cross-examination and made the basis of impeachment on a matter not covered. That is your objection, Mr. LeSourd?

Mr. LeSourd: That is right.

The Court: And that is the issue. Now, I might state, as I have indicated before, that much of the cross-examination of Mr. Taylor was extended, you might say, or permitted from my point of view on the ground of the challenge made to the defense of Mr. Forster, much of which was involved in the attack he has made on [4877] the transactions subsequent to the Indictment.

Now, that was the basis of the extended—the Court's permission of extended cross-examination, not on the issues as raised by the Government's case.

(Testimony of Quentin Ellis.)

Mr. Moriarty: In any event, it is not proper rebuttal.

The Court: I am inclined to think it is beyond the scope of proper rebuttal.

Mr. Griffin: May I suggest the financial statements referred to were placed in evidence by the Government? Mr. Taylor testified, if I am not mistaken, with reference to the preparation of the financial statements, and the conferences in regard thereto. We went into the matter on cross-examination and specifically upon his volunteered statement, I remember it so well, that he was called to this secret meeting.

The Court: I recall that testimony.

Mr. Griffin: Then, upon that basis, I laid the foundation specifically, and so stated at the time, of the impeachment upon that testimony which, of course, goes to his credibility.

The Court: Yes. Now, it grew out of, as I recall the testimony, on the cross-examination, of the response of Mr. Taylor relative to a secret meeting, and then, without his knowing who the person was, subsequently [4878] in a later point on cross-examination, you brought in then the specific meeting, and asked if that wasn't the meeting, and the details were gone into.

Mr. Griffin: Right.

The Court: And I believe it is improper and the Court will sustain the objection.

Mr. Brody: I think there is one other ground

(Testimony of Quentin Ellis.)

on which it may be admissible, your Honor, and that is this:

That one of Mr. Taylor's defenses is that he knew only those matters which were contained in the books of Alpine Dairy, Issaquah Creamery, and the other business enterprises.

It is really the main heart of his defense that he didn't know about Hans Forster's purely personal affairs, and personal cash and personal securities, and the holdings, and personal bank accounts.

Here we have a statement where he states to a witness that of certain assets listed on a financial statement——

The Court: (Interposing) Maybe the Government might use this witness for that purpose, but I don't know that you can.

Mr. Moriarty: I was going to point out that this was impeaching the co-defendant's knowledge, and the [4879] Government claims both had knowledge at all times and both were thoroughly familiar with it.

Mr. Brody: It is vital to our case that the Defendant Taylor had that knowledge, and acted on the basis of that knowledge, or failed to act on it.

Mr. Moriarty: Whether they had it or not, we only contend that they failed to disclose it on their income tax returns.

The Court: It came in on an item of cross-examination.

Mr. Griffin: The Court will remember this as well, and perhaps take judicial notice: I had to

(Testimony of Quentin Ellis.)

cross-examine Mr. Taylor on behalf of the Government because the Government didn't do it.

Mr. Cox: That is your version.

Mr. Griffin: That is right.

The Court: I will not make a comment on that. The Court will adhere to the ruling made and we will now take a recess.

Have you completed your offer of proof?

Mr. Griffin: Is it completed?

Mr. Brody: I think so.

Mr. Griffin: That would be the offer of proof, to which the witness on the stand would answer in the affirmative. [4880]

Mr. Brody: That is correct.

The Court: Does that complete this witness's testimony?

Mr. Brody: That completes this witness's testimony.

The Court: And I take it, there is no cross-examination.

Mr. Griffin: I wouldn't be surprised if the Government cross-examines.

The Court: I think Mr. Ellis may be excused then.

(Witness excused.) [4881]

* * * * *

VERN EGENESS

upon being recalled as a witness for and on behalf of the Defendant Forster, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Brody): Mr. Egeness, are you presently the owner of any interest in Finstad and Utgard? A. No, I am not.

Mr. Moriarty: Objected to as not proper rebuttal.

Mr. Cox: No one said he was.

The Court: Objection sustained, and the answer will be stricken.

Q. (By Mr. Brody): Mr. Egeness, have you at any time since the sale of your interest and that of Mr. Grant and Mr. Cook and Mr. Roberts to Mr. Forster in 1943, have you at any time since then owned an interest in Finstad and Utgard?

Mr. Cox: Objected to as not proper rebuttal, calling for a conclusion of the witness.

The Court: Calling for what?

Mr. Cox: Calling for a conclusion of the witness. This matter was gone into thoroughly, if the Court please, in the Government's case, and was amply covered [4883] by Mr. Forster's counsel at that time.

The Court: I think the question should be more specific.

Q. (By Mr. Brody continuing): Did you, in 1943, in the presence of Hans Forster and Hicks Taylor, enter into any agreement for the purchase

(Testimony of Vern Egeness.)

of one-fourth interest in Finstad and Utgard by you?

Mr. Cox: Same objection.

The Court: Objection overruled. You may answer.

The Witness: Go ahead.

The Court: You may answer.

The Witness: Would you repeat that again?

Mr. Brody: May the question be read, your Honor?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. No.

The Court: Or any interest?

Q. (By Mr. Brody): Or any interest?

A. No.

Q. Now, showing you Defendants' Exhibit A-44,—— [4884]

Mr. Moriarty: I didn't hear you, Mr. Brody.

Q. (By Mr. Brody continuing): Referring to Defendants' Exhibit A-44, on the top page, right-hand column, I will call your attention to the pencilled figure "1" written into inventory, from which it appears to read $12,167.47. Did you make that pencilled "1"?

Mr. Cox: Just a moment, please. Objected to as not proper rebuttal.

This was another matter gone into on cross-examination of Mr. Taylor, and beyond the scope of the direct examination, and a matter upon which

(Testimony of Vern Egeness.)

counsel for Mr. Forster are not entitled to offer rebuttal testimony for impeaching purposes.

The Court: May I see the exhibit?

(Whereupon, exhibit was handed to the court.)

The Court: I will ask Counsel to refresh the Court's recollection on this matter.

Mr. Griffin: This is the matter they went into on direct, and Mr. Taylor testified that these changes were not made by him, but by Mr. Egeness.

Mr. Cox: On the contrary, we did not touch any matters on direct of Finstad and Utgard, other than the matter of the stock to Mrs. Finstad. The matter was broached by Mr. Griffin. [4885]

Mr. Moriarty: And the document identified by Mrs. Simonson.

Mr. Brody: That is correct.

Mr. Cox: That doesn't make it proper rebuttal of Mr. Taylor on his case.

Mr. Brody: I seem to recall on his direct case he went into matters on that document, did he not?

Mr. Cox: Not on direct.

Mr. Griffin: I may say, I don't have any recollection of asking any questions of any changes by Mr. Egeness on the records of Finstad and Utgard.

Mr. Brody: You didn't ask if Mr. Egeness made it, but as to changes made.

Mr. Griffin: Taylor testified Egeness made it.

Mr. Cox: In response to your question, Mr. Griffin.

(Testimony of Vern Egeness.)

The Court: Mr. Reporter, will you read the question?

(Whereupon, preceding question was read by the reporter.)

The Court: This was covered in the examination of Mr. Taylor?

Mr. Brody: Yes, sir.

Mr. Cox: On cross-examination. Of course, it is our position that the matter now as then is [4886] not relevant to the issues in the case.

The Court: The Court will sustain the objection.

Q. (By Mr. Brody continuing): Now, I will call your attention, Mr. Egeness, to Defendants' Exhibit A-122, headed 1947 bonuses paid January, 1948.

Mr. Cox: Same objection, if the Court please.

Mr. Moriarty: 1947.

Q. (By Mr. Brody continuing): 122——

The Court: (Interposing) The question was not put, as yet.

Mr. Cox: I do not concede counsel can ask a proper question to the document since objection has been made as to the last one. It is another matter gone into on cross-examination of Mr. Taylor and not touched upon on direct.

Mr. Brody: The question was not put, but the document was offered by Mr. LeSourd.

Mr. Cox: On redirect, after opened up on cross. It was offered for a limited purpose.

The Court: Objection sustained.

Mr. Griffin: I will have to ask your Honor to

(Testimony of Vern Egeness.)

excuse the Jury then to make an offer of proof in the [4887] record.

The Court: All right.

Mr. Griffin: Sorry.

The Court: This question relates to—well, all right. Members of the Jury, we will now take another recess, and the Court will call you back as soon as we are able, and ask you to heed the admonition given you on similar occasions.

(Whereupon, the Jury retired from the courtroom.)

Mr. Griffin: Does your Honor have A-122?

The Court: They are looking at it.

Mr. Griffin: Oh.

A-122 was offered in evidence by Mr. Taylor.

The Court: Upon redirect.

Mr. Griffin: Mr. Taylor testified to the alteration of ten thousand dollars, or change of ten thousand dollars, he had charged to bonuses. He was examined in detail by his own counsel as to the fact that there were individuals or parties entitled to bonuses from various districts and including Snohomish County, as he testified.

We offer to prove by the witness on the stand, with reference to this Exhibit A-122, and the testimony of Taylor, that with reference to this ten thousand dollars that he used for accounts payable as charged to [4888] bonuses, the bonus—the total bonus was $2,139.55, and that the named parties,—individuals—upon this exhibit are the only ones that were entitled to bonuses and the amount is

(Testimony of Vern Egeness.)

specified to which each is entitled, and then Mr. Taylor thereby used up some $7,860.45, chargeable, he says, to bonuses, and the cold record shows that such was not the fact; and as to Exhibit A-44, Mr. Taylor having testified in effect changes shown thereon were made by the witness on the stand, we propose to show by the witness on the stand that such changes were not made by Mr. Egeness and my position is again, as long as your Honor is ruling, in regards to Mr. Ellis, that this is highly prejudicial to the defense of Mr. Forster.

We didn't bring this Indictment charging these defendants individually. It is the way they are charged by the Government, and we are entitled to defend against the claim of Mr. Taylor, and this deprives us of the right so to defend, and leaves Mr. Taylor's statement to the Jury both in the Ellis matter and now in this one, undisputed that there is some eight thousand dollars of bonus payments made to other parties in 1947, and he was warranted in charging off ten thousand dollars in bonuses, and he was only warranted in charging $2,139.55, and that the [4889] change made in Document A-44 is just as prejudicial to the interests of Mr. Forster because Mr. Taylor stands unimpeached before the Jury in his statements where we have documents of record introduced by the Defendant, subject to explanation of this witness, particularly in the matter of bonuses that he did not make the change in the document. It leaves Mr. Taylor 100 per cent pure as far as the Jury is concerned

(Testimony of Vern Egeness.)

where we are not entitled to meet the falsity of his statement. All of the bonuses are upon this document for the year 1945.

Mr. LeSourd: Your Honor will remember the circumstances under which this document was put in. I offered it for the purpose of showing that the figure that Mr. Griffin had before him when he asked the question of Mr. Taylor on cross-examination of whether the total bonuses were not $500 for the year. Both of these matters are in the same connection as those we have been speaking about, not covered in direct examination, not relevant to this case, opened up in cross-examination, and I assume, permitted on the ground of credibility, or something of that sort. Mr. Griffin was the one who opened up the subject on cross-examination, and he is bound by the answers.

The Court: Does the Government have anything? [4890]

Mr. Moriarty: Well the Government feels that there was a statement by Mr. Taylor that these constituted—that these did not constitute all the bonuses at that time.

Mr. LeSourd: In redirect.

Mr. Cox: In redirect. I don't know that that was exactly what Mr. Taylor testified, either. He testified that there were more shippers than that whom, he thought, were entitled to bonuses.

He did not testifiy as to the number who were entitled to bonuses. The entire matter is collateral, and concerns a corporation not in the Indictment.

(Testimony of Vern Egeness.)

and not a matter establishing the defense of Mr. Forster and not a matter that the Government is charging.

Mr. Moriarty: I feel there is an inference that that document did not contain all the bonuses for 1947.

The Court: The document was introduced on redirect.

Mr. Moriarty: That is correct, produced by Mr. Taylor.

The Court: Identified on cross-examination.

Mr. Griffin: Let's get very straight upon this. I had Exhibit A-122 identified. No, pardon me. I endeavored to have A-122 identified by Mr. Taylor. It was [4891] not identified by Mr. Taylor.

I could not, therefore, offer it in evidence at that time.

The Court: It was marked on redirect?

Mr. Griffin: No; no, I had it marked, of course, before.

The Court: Just for identification.

Mr. Griffin: Yes. Mr. Taylor did not identify the document. I could not offer it, and I asked my first preliminary question as to whether the bonuses exceeded $500 to test his recollection and stopped at that point, because I had to wait for further identification. Without any identification then, Mr. LeSourd offered the document in evidence to which there wasn't any objection by anybody. That is the gist of it.

The Court: That is in accord with my recollec-

(Testimony of Vern Egeness.)

tion. The offer of proof will be rejected. You may call the Jury.

Mr. Brody: No further questions of this witness.

The Court: No further questions?

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated. It is stipulated that the Jury and all defendants are present in the courtroom? [4892]

Mr. Griffin: Yes, sir.

Mr. Moriarty: Yes, your Honor.

The Court: The Court sustained the objection to the last question and I understand from counsel that there are no further questions on direct; is that correct?

Mr. Brody: That is correct.

The Court: Any cross-examination?

Mr. Moriarty: No questions.

Mr. Cox: We have no questions, your Honor.

The Court: No questions?

Mr. Cox: No questions.

Mr. Keesling: No questions.

The Court: That is all, Mr. Egeness.

(Witness excused.)

Mr. Brody: Mr. Schneider? [4893]

RAYMOND J. SCHNEIDER

upon being recalled as a witness for and on behalf of the Defendant Forster, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Brody): Mr. Schneider, were you present at any meeting of the incorporators or shareholders of the Renton Ice and Ice Cream Company in September, 1942, at which Mr. Taylor instructed Mr. Forster to deposit whatever proceeds he might obtain from the operation of the Renton Ice and Ice Cream Company in the Alpine Dairy account?

Mr. Cox: I object to the form of the question.

The Court: You said, was he ever present?

Mr. Brody: Was he present at such a meeting at which Mr. Taylor said——

The Court (Interposing): Objection overruled.

A. I never heard that, anything of that sort, no.

The Court: The question was, were you present?

Q. (By Mr. Brody): Were you present at such a meeting at which you heard that statement made?

A. I was present at all the meetings, but I [4894] never heard that statement made.

Q. Now, with reference to Plaintiff's Exhibit 212 and 212-A, the accounts payable notebooks or records of the Renton Ice and Ice Cream Company, did you keep those records up to date?

A. Yes, sir.

Q. Will you state how frequently entries were made in them?

(Testimony of Raymond J. Schneider.)

Mr. LeSourd: Objected to as not proper rebuttal, if the Court please. The matter was gone into thoroughly when the witness was on the stand.

The Court: You have covered it, haven't you?

Mr. Brody: I want him to explain his first answer. That is my only other question on this matter.

The Court: Objection overruled.

A. Daily, whenever we got an invoice in.

The Court: Would you read that question again, Mr. Reporter?

(Whereupon, preceding question was read by the reporter.)

Q. (By Mr. Brody): Now, with reference to Plaintiff's Exhibits 75, 76 and 77, photostatic copies of cashier's checks on the Peoples National Bank of Washington, Renton Branch, made out to Hans Forster, did you purchase those cashier's [4895] checks? A. Yes.

Mr. Cox: Objected to as not proper rebuttal and repetitious.

Mr. Brody: This is preliminary to one further question.

The Court: All right.

Q. (By Mr. Brody): Were you instructed to purchase those cashier's checks?

A. I was.

Mr. Cox: Same objection.

The Court: Are you meeting Mr. Taylor's statement?

Mr. Body: Yes, I am.

(Testimony of Raymond J. Schneider.)

The Court: Will you phrase it to cover it as you recall it?

Q. (By Mr. Brody): And did you voluntarily and of your own volition purchase those cashier's checks?

Mr. Cox: Objected to.

Mr. Brody: I am almost to the exact statement Mr. Taylor made.

The Court: If you will relate it to what Mr. Taylor's testimony was. I take it that is what you are [4896] meeting.

Mr. Brody: That is correct, your Honor.

The Court: Will you re-phrase it again?

Q. (By Mr. Brody continuing): Did you, of your own volition, and as of your own idea, purchase those cashier's checks to be made payable to Hans Forster?

Mr. Cox: I would object, if the Court please. I can also remember this witness' testimony when he was on the stand in the first place, and he thoroughly covered this, and said Mr. Taylor instructed him to do it all. They are not entitled to bring it back again.

Mr. Brody: This goes directly to a statement of Taylor that the witness, acting entirely independently and voluntarily, purchased the cashier's checks. I merely wish to show the statement to the witness and ask him what circumstances existed.

Mr. Cox: If there is any contradiction between the two witnesses, it already exists.

(Testimony of Raymond J. Schneider.)

The Court: Again, testimony of Mr. Schneider has been some time back, and the Court will not attempt to determine as between Counsels' positions which is correct. I will ask the Jury to relate this testimony only insofar as it may meet testimony of Mr. Taylor, and [4897] the objection is overruled, and if you wish, the reporter will read the last question.

Mr. Brody: Yes.

(Whereupon, preceding question was read by the reporter.)

A. No.

Q. (By Mr. Brody): Then, why did you purchase them?

A. Advised by Mr. Taylor.

Mr. Cox: Objection.

The Court: Objection overruled. I mean, sustained.

Q. (By Mr. Brody): Who instructed you to purchase them, Mr. Schneider?

Mr. Cox: Objection.

Mr. Brody: Your Honor, it simply goes——

The Court (Interposing): Oh, the objection is overruled.

A. Mr. Taylor.

Q. (By Mr. Brody): Who instructed you?

A. Mr. Taylor instructed me.

Mr. Brody: That is all.

Mr. Moriarty: No questions. [4898]

(Testimony of Raymond J. Schneider.)

Cross Examination

Q. (By Mr. Cox): Mr. Schneider, directing your attention to Exhibit 212, I believe you testified on Mr. Brody's examination that you made entries in this daily, or as frequently as invoices were received, is that correct?

A. That is correct.

Q. There are occasionally in here, are there not, periods when you went for some time and no items were entered?

A. If there were no bills received, that would be the case.

Q. That is, you never accumulated the bills?

A. I don't recall any time, unless I would be away a week and perhaps no one else did it.

Q. Well, directing your attention to a page in Exhibit 212 headed June 1, 1947, is there an item here relative to Union Oil? A. Yes.

Q. And when did you receive that item?

A. According to this, the date of it was the 10th.

Q. Now, that is the date you received and posted it, is it?

A. I dated these as of the date of the invoice, I [4899] believe.

Q. I see; you got then an invoice here sometime in May, dated May 10th, and you don't know on what date you made the entry then?

A. No, I wouldn't know now.

Q. Now, one, two, three, four, five, six, seven, eight, nine lines below that, Mr. Schneider, there

(Testimony of Raymond J. Schneider.)

is an entry of an invoice from someone named Kemp, is there? A. Yes.

Q. What was the date of that invoice?

A. The 7th.

Q. Where was the Kemp?

A. It was a Seattle firm, I think.

Q. Union Oil was also in Seattle?

A. Renton.

Q. That was in Renton? A. Yes.

Q. And the mail service is different, so that you get so much in advance that you have not posted, although it is dated three days later?

A. Would you care to have me tell you what I think it was?

The Court: The Court will sustain objection to that.

Mr. Cox: The Court sustains an objection?

The Court: Yes.

Q. (By Mr. Cox): It is your testimony, Mr. Schneider, that you put every obligation for which the Renton Ice and Ice Cream Company owed into Exhibit 212 and 212-A?

A. Everything we bought, and we were billed for, I would say went in there as it came in, yes. That was the intention.

Q. But if you owed obligations which were not billed for on a regular basis, they were not entered?

Mr. Griffin: Objected to as not proper recross examination.

The Court: Objection overruled.

A. That is possible——

(Testimony of Raymond J. Schneider.)

Mr. Cox (Interposing): That is all.

A. (Continuing): ——if we had no billing.

The Court: That is all, then. There is nothing further.

Mr. Brody: No further questions.

Mr. Griffin: No recross.

(Witness excused.)

Mr. Griffin: Mr. Kachlein?

The Court: You have been sworn.

Mr. Griffin: Mr. Kachlein should be sworn in the presence of the Jury, if the Court please. [4901]

The Court: If you wish, you may be sworn.

GEORGE F. KACHLEIN, JR.

upon being called as a witness for and on behalf of the Defendant Hans Forster, and being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Griffin): State your name, please.

A. George F. Kachlein, Jr.

Q. And your home residence?

A. 941 Eleventh Avenue North, Seattle.

Q. And your profession?

A. I am an attorney at law.

Q. And when were you admitted to practice before the Supreme Court of the State of Washington, Mr. Kachlein?

A. In February, 1933.

Q. And in what year were you admitted to practice before this court?

(Testimony of George F. Kachlein, Jr.)

A. The same year.

Q. And with whom did you begin your association in the practice of law?

A. I began with the firm of Bogle, Bogle and Gates in July, 1932, as a law clerk.

Q. Are you now a member of that firm?

A. Yes; I have been since 1937. [4903]

Q. Did you in your practice specialize particularly in any branch of the law?

A. The first eight or nine years being with the firm I handled the tax work that was in our office. That was up through, approximately, 1942. At that time I was under leave of absence from the office for four years.

Q. In connection with what type of work?

A. With war work where I was employed by Todd Shipyards Corporation, or a subsidiary, Seattle-Tacoma Shipbuilding Company.

Q. In what capacity?

A. At the Tacoma plant as assistant to the president of the subsidiary of Todds.

Q. That was in connection with war work?

A. Yes, it was.

Q. When did you return to the firm then?

A. In July, 1946.

Q. And what has been your specialty particularly since that time?

A. Well, it has been a multitude of different types of work, partially in tax, corporate work, corporate financing, and labor work, and also in the office management and of the firm.

(Testimony of George F. Kachlein, Jr.)

Q. Are you married? [4904]

A. Yes, I am.

Q. Any children? A. One son.

Q. Attending the University of Washington?

A. A Sophomore at the University of Washington, sir.

Q. You are acquainted with L. Hicks Taylor?

A. Yes, I am, sir.

Q. When was your—when and what was the source of your first acquaintanceship with Mr. Taylor?

A. Shortly after I returned to the office in 1946. I believe it was in the month of December, 1946, Mr. Taylor called me to state that he had known something about me and knew that I had been doing tax work and that he had a client that he would like to have me handle some tax work for.

Q. And who was that client?

A. That was a family consisting of three, father and son and daughter, who were operating a family partnership and the question was——

Mr. Moriarty: Objection, if your Honor please, to this line of testimony sofar as the materiality is concerned.

The Court: Well, it is preliminary.

Mr. Moriarty: I thought the preliminary [4905] had been completed.

The Court: Objection overruled.

A. (Continuing): ——the question as to the advisability of converting the family partnership into a corporation, and that was determined after

(Testimony of George F. Kachlein, Jr.)

consultation with Mr. Taylor and the three clients.

Q. Did——without any detail, did that situation —was Mr. Taylor the accountant for this party?

A. Yes, Mr. Taylor was the accountant for the family partnership which was later converted to the corporation.

Q. Did that result in an involvement of tax matters with the Government with the books of that concern? A. Yes.

Mr. LeSourd: Objected to.

Mr. Griffin: Just a moment.

Mr. LeSourd: Objected to as an immaterial and irrelevant and also as leading.

The Court: Well, the Court will overrule the objection.

A. (Continuing) Yes. Approximately six months later Mr. Taylor reported to me that the family partnership between the father and the son [4906] and the daughter was under investigation and asked that I assist in preparing the necessary protest and handle the matter through the Treasury Department to a conclusion, which was done.

Q. You did that? A. I did, sir.

Q. Did Mr. Taylor during that period of time remain as the accountant?

A. He did, sir.

Q. Now, do you recall when the next matter of business with Mr. Taylor occurred?

A. Yes. In the latter part of the year 1947 Mr. Taylor called me and stated that another client of his had some tax difficulties involving the validity.

(Testimony of George F. Kachlein, Jr.)
for tax purposes of a family partnership between a father, who was a professional man, and a daughter, who was a non-professional woman. I undertook the assignment and worked with Mr. Taylor and prepared the necessary protests and presented the various arguments before the Treasury Department representatives and it wasn't settled until about 1952. That was due to the fact that there were family partnership cases pending before the Supreme Court, and the right——

Q. (Interposing): Was Mr. Taylor, did Mr. [4907] Taylor continue up until sometime in 1950 as the accountant for that family partnership?

A. I believe he is still the accountant for those parties, sir. He continued on through 1950 to '51 and '52, which was my last contact with them with respect to that matter.

Q. In connection with that employment, with those two concerns, did you become familiar with Mr. Taylor's handling of books and accounts?

A. Yes, I did.

Q. Did Mr. Taylor eventually retain you as his attorney in regard to his own tax problems?

A. Yes, he did, sir, on or about the 30th of July of 1948 he retained me.

Q. What was—what was the matter involved at that time with Mr. Taylor?

A. On or about that date he called me by telephone and advised that the Internal Revenue Department had undertaken the investigation of his own individual records and that he had asked one

(Testimony of George F. Kachlein, Jr.)

of the representatives of the Department to withhold the examination for a limited period as he was extremely busy with clients' matters. He advised—asked me, first of all, if he could file—prepare and file amended income tax returns. He also asked me in [4908] the event that the—his request for the delay in the examining of his records was not granted if I could be of some assistance to him in both of those assignments. I took it on and advised him sofar as the amended income tax return was concerned that it was too late to stop any investigation but if he wanted to prepare the same he could. With respect to the second item I did contact a representative of the Government, a Mr. Weston, and made the request for a limited period of time that the Government would withhold the investigation of his records to afford him the opportunity to review his books and that he was extremely busy at the time and also asked that same Government representative if it would be all right to file an amended return. I so advised Mr. Taylor of the results of the conferences that I had with Mr. Weston.

Q. Did Mr. Taylor go into the matter with you of the condition of his own books and records and his returns?

A. Yes, he did. He stated to me that he was very much embarrassed. When the Government agent came in and he started to check his bank deposits and deposit slips with his cash book, or journal as I believe he called it, as against his in-

(Testimony of George F. Kachlein, Jr.)
come [4909] tax return, he found that there was a substantial understatement of income.

Q. By Mr. Taylor himself?

A. By Mr. Taylor on his own income tax returns. That his journal, or cash book, whichever you may want to call it, from which he based his income tax returns, reflected accurately—that is, the cash book figures were picked up and put into the tax return but insofar as his deposit slips and his bank account, he found he had substantially more income in the years under investigation than he had reported and that was the reason that he wanted, as he stated, to me, to file an amended income tax return for those years.

Q. As you investigated the matter with Mr. Taylor were there several years involved?

A. Yes. I believe the years that were under consideration—that the power of attorney, rather, to me were from 1942 through 1947, inclusive.

Q. And what did—did Mr. Taylor finally advise you of the amount, or percentage, of understatement of his income in those years?

A. No, I do not believe that he gave me any figures as I don't know what he finally came up with, even though I represented him from 1948 through a [4910] good part of 1950. I do know the figures which the Government alleged but as far as the final determination, I don't know that, Mr. Griffin.

Q. After this first consultation with you, which

(Testimony of George F. Kachlein, Jr.)

was in July—the end of July, I think you said, of 1948? A. That is right.

Q. Were there numerous consultations in regard to his own tax situation during the following months?

A. Yes, there were. The first one came about three weeks after I had contacted Mr. Weston and I got a call from Mr. Weston, who was of the Internal Revenue Agents office here, stating that he wondered what I thought I was doing, that he had heard a report on the street that I had arranged that Mr. Taylor's taxes were all settled and that there was to be no further investigation. I assured him such was not the fact, and he said that information came to me, and Mr. Taylor told someone on the street about it, and I called Mr. Taylor with respect to that and Mr. Taylor advised me he made no such statement and I then advised Mr. Taylor that in view of the fact of Mr. Weston's making the statement to me he would have to make a report to his superiors [4911] with respect to the inference, that he could expect to have his income tax returns examined very promptly. Approximately a week later, I believe that Mr. William Marx, sitting here in the court, and Mr. McCarthy of the Special Agents' Office, started their investigation and I sat through several meetings with them during the period of time from 1948 through their completion of their examination in August of 1949. At those meetings Mr. Taylor was present and participated in them.

(Testimony of George F. Kachlein, Jr.)

Mr. Moriarty: May the record show that the Government objects to this as all immaterial.

The Court: The record may so show.

Are you speaking of all the testimony?

Mr. Moriarty: I mean the recitals that now don't seem to be material to the issue between Mr. Taylor and Mr. Forster. Certainly not relevant to the Government's case. I recognize the position that the Court is in but I think it is my duty to call it to the Court's attention.

The Court: Well, I believe I probably should advise the Jury at this time that this testimony has relationship to the issue raised by the Defendant Taylor as part of his defense wherein, as you will recall, in the opening statement he stated, [4912] or his Counsel stated, that by virtue of representation of Mr. Taylor by Mr. Kachlein, a relationship existed as a result of which at a later date Mr. Forster was under investigation and Mr. Forster undoubtedly made statements to the representatives of the Treasury Department relative to the books of Mr. Taylor. I understand in the theory of the defense of Mr. Taylor they believe this transaction raises some question as to the credibility of the defense of Mr. Forster. Whether it does, of course, is a matter entirely for the Jury. This testimony having—some testimony having been introduced, or the defense of Mr. Taylor having been put in, this testimony now comes in by Mr. Forster, on behalf of Mr. Forster, in rebuttal and an explanation of that testimony, and while the incidents

(Testimony of George F. Kachlein, Jr.)
that are covered in this matter by Mr. Kachlein may be preliminary and not related to the issues involved—namely whether these three defendants here charged are guilty of the charge—and they do not relate to the specific elements, which the court will later instruct you are involved in the charge, but facts that may have a bearing on the credibility of witnesses or defendants are always material and this testimony is in that—along that line. [4913]

Mr. Moriarty: And, if your Honor please, no part of this matter was introduced by the Government.

The Court: I think it is clear that this issue is one raised by the defendants Forster on the one hand and Taylor on the other.

Mr. Moriarty: Thank you.

The Court: Is there any objection to the Court's comment?

Mr. Griffin: No, none at all, except it was an issue raised in the opening statement by the Defendant Taylor, and Forster never raised it.

The Court: I believe I so signified.

Mr. LeSourd: I think your Honor covered that.

The Court: All right, we will now proceed.

Mr. Griffin: May I proceed?

The Court: Yes, you may proceed, Mr. Griffin.

Q. (By Mr. Griffin): Mr. Kachlein, during this investigation by Mr. Marx, Mr. McCarthy—at which you were present in several conferences with the Agents—and Mr. Taylor, did you become then fa-

(Testimony of George F. Kachlein, Jr.)

miliar with the [4914] manner in which Mr. Taylor handled his own books and records?

A. Yes, very much, sir.

Q. And did you prepare for the Agents in behalf of Mr. Taylor a memorandum dealing with the manner in which Mr. Taylor had handled his own books and records and the reason therefor?

A. I did, sir. At the conference in August of 1949 before the Special Agents office and their representatives an oral presentation was made in behalf of Mr. Taylor, Mr. Taylor being present, and I was then requested to reduce to writing and make a written presentation in his behalf. I did do that and I believe submitted it to them the latter part of August, 1949, to Mr. Weisner, who was then, I believe, the acting Special—Acting Chief of the Special Agents Office.

Q. Was that written presentation—did it cover the statements that you had made in your oral presentation in behalf of Mr. Taylor?

A. It did to the best of my ability, sir, and it covered additional items which Mr. Taylor and myself had gone over in my office in preparation of the formal statement.

Q. And did Mr. Taylor go over this statement [4915] before it was presented? A. Yes, sir.

Mr. Griffin: Will you mark this memorandum for identification?

The Clerk: Defendants' Exhibit Number A-139 marked for identification.

(Testimony of George F. Kachlein, Jr.)

(Defendants' Exhibit No. A-139 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-139 for identification I will ask you if this is the memorandum prepared by you, to which you have just testified, which was delivered to the Government Agents in connection with Mr. Taylor's own tax matter?

A. Yes, this is a copy of the one delivered to the Agents.

Q. Now, while Counsel is examining that:

Did you find in these conferences with Mr. Taylor that he had ever reconciled his bank account to his journal, if it was a journal? On the witness stand I think he testified and called it a time book. Did you find that he had ever reconciled his bank account to this book, whether journal or time book from which he took the figures for his own tax return? [4916]

A. No, I didn't. He stated to me, as a matter of fact, that his failure to properly file his return was due to the fact that he had not reconciled his cash book, or journal, with his cash account, bank account.

Mr. Griffin: I will withhold the offer of this until morning so that Counsel may examine it.

Q. (By Mr. Griffin): Did Mr. Taylor give you any excuse, any reason, you could use that would excuse his situation in his own books and records?

A. Yes, his excuse that he gave, the basic one, was that he was so busy looking after the affairs

(Testimony of George F. Kachlein, Jr.)

of other clients that he failed to look after his own financial affairs properly; that insofar as his collections by the month or by the job, as the case may be, he would properly put them through the bank accounts but insofar as his journal, cash book, or whatever you may call it, was concerned, originally when he started out many years ago he would continue day by day to make the entries but as he became more busily engaged in his profession that he might make the entries once a week, and then it extended on to once every two weeks, and finally he [4917] would make them from memory and he used that as his basis for his income tax returns. He did keep records insofar as his bank interest, and insofar as his stock purchases rather carefully as he was able to get those from Jordan and Company, which, I believe, was his stock brokers, and from the bank accounts where he had books.

Q. Do you recall as of that time—and by that time I mean prior to the Indictment of Mr. Taylor and which would have been prior to the Indictment in this case, and while these conferences were being had with the Agents—do you recall at that time of making—using—the terms, with the Agents the term, "sloppy" in connection with the bookkeeping of Mr. Taylor?

A. Both sloppy and careless, sir.

Q. And as of that time did you base that upon his own records and your experience with these other two companies that be brought to you?

A. Well, I had experience with one or two others

(Testimony of George F. Kachlein, Jr.)

of Mr. Taylor's clients who Mr. Taylor had brought to our firm to help assist in some problems they had and from the several it became apparent to me that Mr. Taylor's methods of handling the books of account were sloppy, sir. [4918]

Q. Do you recall one of these conferences you had before Indictment was with Mr. Patten?

A. Yes, sir. That was in November. I think there were two conferences with Mr. Patten in November, 1949. One was not in the presence of Mr. Taylor. That was the first one, and the second was in the presence of Mr. Taylor, if my memory serves me right, sir. The first was a preliminary conference and the second was the full, formal conference where the entire presentation of Mr. Taylor's case was made to Mr. Patten.

Q. What principal representations were you making to the Government Agents, including Mr. Patten, on behalf of Mr. Taylor at that time?

A. There were several, sir. One was that he was a very overworked person. He had undertaken more work to do than he could normally accomplish. The second thing is that he had a good reputation among his clients. They liked him. They thought well of him. The third matter was that with all due regard to their feeling toward him, his bookkeeping experience or accounting experience was somewhat limited and his methods of accounting were somewhat sloppy as reflected in his own methods in protecting himself in the income tax returns. It was [4919] not an intentional matter. It was one, frankly, due

(Testimony of George F. Kachlein, Jr.)
to overwork and ignorance more than anything else.

Mr. Griffin: I think this would be a good time to recess because we are getting right down to the Indictment.

The Court: All right. Mr. Kachlein, you may be excused.

(Whereupon, witness withdrew.)

* * * * * [4920]

GEORGE F. KACHLEIN, JR.

having been called as a witness for and on behalf of the Defendant Hans Forster, and having been previously duly sworn, resumed the witness stand and testified as follows:

Direct Examination—(Continued)

Q. (By Mr. Griffin): Mr. Kachlein, as of yesterday you had completed certain conferences with Mr. Taylor, the Internal Revenue staff, including Mr. Patten, and on or about February 15, 1950, did you have advice from Mr. Sager, the then Assistant United States District Attorney, in connection with Mr. Taylor's situation?

A. Yes. I had received a letter, I believe, on the 16th of February, 1950, from Mr. Sager, who was then the Assistant District Attorney, whose offices were at Tacoma, advising that the Hicks Taylor matter involving certain years had been referred to him for action—that is, prosecution—and that he stated before any action was taken he would give me an opportunity, or the taxpayer, to be heard in connection with the matter.

(Testimony of George F. Kachlein, Jr.)

Q. Did you confer with Mr. Taylor in connection [4930] with this letter?

A. I did, sir.

(Whereupon, there was a brief pause.)

Mr. Griffin: Will you mark this for identification, please?

The Clerk: Defendants' Exhibit Number A-140 marked for identification.

(Defendants' Exhibit A-140 marked for identification.)

Mr. Griffin: And this one, please.

The Clerk: Defendants' Exhibit Number A-141 marked for identification.

(Defendants' Exhibit A-141 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-140 I will ask you if that is the letter under date, February 15, 1950, from Mr. Sager, United States Attorney's Office, to you in regard to this matter?

A. Yes, this is the letter, sir.

Q. And A-141, your reply of February 17th to Mr. Sager; a copy of your reply?

A. Yes, this a copy of the reply that I sent to Mr. Sager.

Q. Following those letters did you have—and [4931] your conference with Mr. Taylor, was it clear then that there was going to be prosecution—criminal?

A. Yes, it was clear. I had a lengthy conversation in conference with Mr. Taylor wherein we reviewed the tax case that had developed over the

(Testimony of George F. Kachlein, Jr.)
year and a half period. I discussed with him what the chances were in our opinion as to a defense to the income tax matter and recommended to him that in our opinion—and I mean by "our" that is our firm because I had reviewed the matter with several of our trial men and tax men in the office to determine what action we should take in respect to the matter, and advised him that in our opinion—he did not have a defense to his case, that we had lived with the case since September 30th, or, rather, July 30, 1948, and had met with the Internal Revenue Agents, field men, had met with the Review Staff, had reviewed it carefully and felt that the best thing to do was to work out an arrangement with the District Attorney in the event he still wanted to prosecute the case to have him plead guilty to one charge and to waive the necessity of going before a grand jury for indictment, that by doing so it would eliminate added publicity, it would not in our opinion affect him as adversely as if he went through—had the matter go [4932] before a grand jury and the publicity that would follow, and then go to trial and a trial in which we felt his defense was hopeless.

Q. Did Mr. Taylor make any complaint to you that he had any defense because of his failure to make the full return of income?

A. Yes, he did. He stated that actually in his mind——

Mr. Maxwell: Will you fix the time and place?

A. (Continuing) At the meeting that I had on

(Testimony of George F. Kachlein, Jr.)

the 17th of February, again, when I came back and reported to him and had a meeting following my conference with Mr. Sager, and that was between the 17th and 28th of March, Mr. Maxwell.

Mr. Maxwell: Thank you.

A. (Continuing) Mr. Taylor's position was at all times that he had been careless and he had been negligent in the keeping of his own books and returns, that he had been extremely busy and that many of the small concerns which he had represented over a number of years had ballooned, particularly during the war period—mushroomed out—and that he was snowed under with work and that, therefore, he didn't feel that he wilfully attempted to evade the income [4933] tax, that it was an oversight on his part. He felt very much chagrined that he had made the mistake and so stated very clearly to me and also to the court at the time that he was sentenced. Our position was, however, that, be that as it may, here was a man who was a licensed public accountant, who has held a Treasury Card, or did up until November, I think November of 1948, who had been president once or twice of the Washington State Public Accountants, who had held himself out to the public as a man who was handling tax matters, that we didn't feel that any court or jury could conceive that he did not have some knowledge of the failure to report his income or prepare his tax returns properly and we so stated to him, that if he went before a jury we felt he would be convicted and, therefore, our recom-

(Testimony of George F. Kachlein, Jr.)

mendation was that it was an attempt to work out an arrangement with the District Attorney whereby the five years involved, he would plead guilty to one count and the other five counts would be dismissed. That was the basis of our decision on the matter.

Q. (By Mr. Griffin): Then did you confer with Mr. Sager and try to work out a program for Mr. Taylor? [4934]

A. I conferred with Mr. Sager as mentioned in the letter, that exhibit that was introduced, about four or five days following the sending of the letter to Tacoma. At that conference I reviewed with Mr. Sager the position which we had taken before Mr. Patten and Mr. Wisener, and stated it was still our position. He commented that he had reviewed the file and felt that no jury would find Mr. Taylor innocent and that he was going to proceed with the matter before the grand jury unless we were willing to waive indictment and if we did so and go without trial he felt that could be worked out whereby we could have Mr. Taylor plead guilty to one charge out of the five. The years in which he was indicted, which I believe was 1942 to 1947, that he, Sager, would determine the year for which Mr. Taylor would plead guilty. After having that meeting I then conferred again with Mr. Taylor and told him the outcome of it and asked him to think over whether or not he wanted to go that route or if he wanted to go the other route and try it out; that insofar as we were concerned we felt that he might be better if he selected additional counsel, or

(Testimony of George F. Kachlein, Jr.)

other counsel, by reason of our feeling in the matter. About the 28th of February I talked again with Mr. Taylor and asked him as to what his [4935] position was and he stated that after all he felt that he had confidence in our office and in our judgment and he was willing that I work out with Mr. Sager a time and place to meet to carry out the tentative arrangements which I had made with Mr. Sager, subject to Mr. Taylor's approval.

Q. What followed at that particular time?

A. I called Mr. Sager, or Mr. Sager called me, I don't recall which, and made a tentative date to meet with Mr. Sager in his office March 2, 1950, and asked Mr. Sager to prepare the information which would charge Mr. Taylor with the five counts and to arrange for us to appear before the Court to enter our plea. That was done on March 2nd when we went to Tacoma.

Q. There was also a conference with the probation office, Mr. Coventry, at that time?

A. On March 2nd we drove to Tacoma and met in Mr. Sager's office and we went over the information or the Indictment, as the case may be.

Q. By "we" you mean?

A. Mr. Taylor and myself. We then went into Court and appeared before Judge Leavy, at which time Judge Leavy specifically asked Mr. Taylor if he had counsel and if he had read over the Indictment, [4936] and if he was ready to give his answer, which he did, pleading not guilty, I think, to four of the charges and pleading guilty to the charge for

(Testimony of George F. Kachlein, Jr.)

1943. Following that the Court set bond which, if my recollection serves me right, was twenty-five hundred dollars and we were instructed by the Clerk to meet with Mr. Coventry who was the probation officer, or who was known as the pre-sentencing officer, in Judge Leavy's court, and we met with him and went over the information which he desired to obtain in behalf of the Court prior to sentencing.

Q. Now, as of that date of March 2, 1950, had you ever met Hans Forster?

A. No, Mr. Griffin.

Q. Or had you or your office ever had any business dealings with and for the Defendant Hans Forster? A. No, Mr. Griffin.

Q. Now, did the matter of Mr. Taylor's position as in March of 1950 have a tendency to reflect upon his license from the State of Washington to practice public accounting? I won't go into detail with that now. You can just state "yes" or "no".

A. Yes.

Q. Did you have a conference with Mr. Taylor [4937] and his associates in that connection, about March 9th?

A. I don't recall in March having a conference with him. The conference that I recall took place in April of 1950, Mr. Griffin.

Q. Was one of Mr. Taylor's associates a Mr. Benedict? A. Yes, sir.

Q. Did you have a conference with Mr. Benedict on or about March in the office?

A. I did, sir.

(Testimony of George F. Kachlein, Jr.)

Q. Was that with the—was Mr. Taylor aware of that conference? A. He was, sir.

Q. And what did that involve?

A. That involved what the position of the several accountants that were associated with Mr. Taylor would be. They were concerned as to the fact that Mr. Taylor had pled guilty to an income tax matter of his own and they wondered as to how it would reflect upon them in their association with Mr. Taylor.

Q. Later did you advise how they should conduct their business; how the office set up should be arranged? [4938]

A. About June 27th or 28th——

Q. (Interposing) Well, I will take it that your answer is "yes" to that question. A. Yes.

Q. Because I want to take it as chronologically as I can. A. Yes; yes, sir.

Q. Now, was Mr. Taylor's civil tax liability also involved as well as the criminal liability?

A. Yes, it was. There are a number of things that become involved after a person has pled guilty. One of the things which we were attempting to determine from the time the investigation started in July of 1948 was the exact tax liability of Mr. Taylor, and Mr. Taylor wanted likewise to determine that as he wanted to pay it as soon as possible for stop the running of interest. When the matter was referred, however, to the Department of Justice for criminal prosecution the matter then goes out of the hands of the Treasury Department and be-

(Testimony of George F. Kachlein, Jr.)
comes a matter for the Department of Justice to handle and they, under a long established procedure, do not allow the taxpayer, until such time as the criminal matter is finally determined, to sit down and determine the civil liability with the Internal Revenue [4939] Department. Thus, when Mr. Taylor had pled guilty, knowing that he would possibly be sentenced for a period of time to the penitentiary both Mr. Taylor and myself wanted to work out as quickly as possible a definite settlement of his civil tax liability and starting with Mr. Coventry, the probation officer, then with Mr. Sager, who was the Assistant District Attorney, or Assistant United States Attorney, we attempted to get the final figures which the Government had determined to be Mr. Taylor's liability, not that we necessarily would agree with them but so that we would have some way in which to work out a settlement wherein there might be a difference from a factual standpoint. This took place, I would say, starting about the 10th of March and, frankly, through the time up to his actual sentencing. We did get from the District Attorney the net figures that were due and owing from Mr. Taylor and from his wife for the years involved but we didn't get any breakdown of it. We then attempted to get the breakdown from the Internal Revenue Department which we did not get, nor have I ever seen.

Q. Now, in connection with this matter, both of the—in the civil liability and the criminal prosecution, [4940] were you required to file with the pro-

(Testimony of George F. Kachlein, Jr.)

bation officer, United States Probation Officer, a statement for Mr. Taylor before sentence?

A. Yes, I was. In the—I did file one. I prepared one after a lengthy consultation with Mr. Taylor.

Q. And did Mr. Taylor go over that statement before it was filed? A. He did, sir.

Mr. Griffin: Will you mark this for identification, please?

(Defendants' Exhibit A-142 marked for identification.)

The Clerk: Defendants' Exhibit Number A-142 marked for identification.

Mr. Griffin: By "this" I am referring to a statement of March 20, 1950.

Mr. Moriarty: You haven't offered 141?

Mr. Griffin: I haven't offered any of these yet.

Q. (By Mr. Griffin): Handing you 142 for identification I will ask you if that is a copy of the statement you just referred to under date of March 20, 1950, to the United States Probation Officer? [4941]

A. Yes, it is, sir.

(Whereupon, there was a brief pause.)

Mr. Griffin: At this time I offer Exhibit A-39.

The Clerk: A-139.

Mr. LeSourd: No objection.

Mr. Moriarty: Except as to materiality the Government has no objection. The Government feels that the entire matter is immaterial.

The Court: Well, the materiality of this is restricted as the Court indicated yesterday.

Mr. Griffin: Yes, sir.

(Testimony of George F. Kachlein, Jr.)

Mr. Moriarty: Very well, your Honor.

The Court: And it may be admitted.

(Defendants' Exhibit A-139 admitted in evidence.)

Mr. Griffin: And I offer A-140 for identification.

Mr. LeSourd: No objection.

Mr. Moriarty: Same objection.

The Court: It may be admitted on the same basis, that the matter refers only to the issues as outlined to the Jury yesterday afternoon.

(Defendants' Exhibit A-140 [4942] admitted in evidence.)

Mr. Griffin: And A-141.

Mr. LeSourd: No objection.

Mr. Moriarty: Same objection.

The Court: A-141 may be admitted on the same basis.

(Defendants' Exhibit A-141 admitted in evidence.)

Mr. Griffin: And A-142.

Mr. LeSourd: No objection.

Mr. Moriarty: Same objection.

The Court: It likewise is admitted on the same basis as A-139 and subsequent admitted exhibits.

(Defendants' Exhibit A-142 admitted in evidence.)

Mr. Griffin: May I refer to the exhibit now, if the Court please?

A-139 is headed:

"Presentation of Facts and Arguments in Support of Position That L. Hicks Taylor and Jessie

(Testimony of George F. Kachlein, Jr.)

M. Taylor, His Wife, Are Not Subject to the Penalties prescribed by Section 141 of the Internal Revenue Code for the Taxable Years 1942-1947 Inclusive." [4943]

Q. (By Mr. Griffin): You have testified that this is the statement submitted to the staff, Internal Revenue Staff? A. That is correct.

Mr. Griffin: There is an opening statement entitled "Opening Statement," which I will not read which is the charge.

The second page, "The Facts," paragraph number 1. "History of Taxpayer" in detail, "(b) Schooling." Referring to the education of Mr. Taylor. "(c) Business Experience of Taxpayer," in considerable detail. "(d) Living Habits," on page five. "(e) Development of Taxpayer's Accounting Practice." "(f) Taxpayer's Bookkeeping Methods," in detail. "(g) History of Income Tax Examination"; that is by the Agents. "(h)," an argument of "Substantial Estate Not Required." And on page nine, under the heading of "Argument," the argument made against the claim of fraud. I would like to read it but it is too long for my present purpose in reading.

A-140 is the letter from Mr. Sager, February 15, 1950, to Mr. Kachlein, advising:

"The Attorney General has forwarded to me for prosecution the investigative file in the above entitled matter." [4944]

That is L. Hicks Taylor.

(Testimony of George F. Kachlein, Jr.)

"I have reviewed the file and contemplate filing criminal charges.

"The Attorney General suggests that before any formal action is taken that I give you an opportunity to be heard in behalf of the taxpayer. If you wish, I shall be glad to see you concerning this matter prior to taking any definite action. Since prosecution will cover the year 1943 charges will have to be filed prior to March 12. So, if you plan to see me, you should arrange to do so prior to that time. Yours very truly, Harry Sager, Assistant United States Attorney."

To which A-141 is the reply of Mr. Kachlein of February 17th, arranging for the appointment.

A-142 is Mr. Kachlein's letter to Mr. Coventry, United States Probation Officer, March 20, 1950, setting out on pages one and two references in behalf of Mr. Taylor, and that goes over to the middle of page three. Beginning at the middle of page three the statement of assets and liabilities of Mr. Taylor, total of $204,907.80. The next page in explanation of matters involved as of March 20, 1950.

Q. (By Mr. Griffin): Now, when was the—was a time arranged, was a time arranged for the sentence of Mr. Taylor?

A. As of this date, no, Mr. Coventry at the time we had our original meeting, stated that normally an investigation such as would be conducted on behalf of the Court would take anywhere from six weeks to two months, that we might anticipate somewhere around May 1st as the sentencing date.

(Testimony of George F. Kachlein, Jr.)

Later on the date was set but that was a week before actual sentencing was had which was April 25, 1950.

Q. As of——

Mr. Griffin: Strike that. Will you mark these two letters as one exhibit, the top one March 31, 1950?

The Clerk: Defendants' Exhibit Number A-143 marked for identification.

(Defendants' Exhibit A-143 marked for identification.)

Q. (By Mr. Griffin continuing): Handing you Exhibit A-143 for identification I will ask you if the first letter dated March 31, 1950, is a letter to you from Mr. Sager in this matter?

A. Yes, it is, sir. [4946]

Q. And the second letter is a copy enclosure with that letter under date of March 29th, a letter from Mr. Stockton to Mr. Sager?

A. Yes, it is, sir.

Mr. Griffin: I will offer A-143 for identification.

Mr. Moriarty: Same objection.

Mr. LeSourd: No objection.

The Court: It will be admitted as the immediately preceding exhibits have been admitted and the Court again advising the Jury that this matter relates not to the charge contained in the Indictment but the issue as outlined to the Jury yesterday.

(Defendants' Exhibit A-143 admitted in evidence.)

(Testimony of George F. Kachlein, Jr.)

Mr. Griffin: The first letter from Mr. Sager to Mr. Kachlein is dated March 31, 1950, and bears a stamp received April 1, 1950, which states that it is enclosing a statement from Mr. Stockton of the tax unit in regard to the outlined deficiencies and liabilities of Mr. Taylor for the years referred to in Mr. Stockton's letter, being 1942 to 1947, giving the claimed deficiency and the penalties claimed for each of those years. The total is not stated in the letter. [4947]

Q. (By Mr. Griffin): These figures, or the pencil figures, Mr. Kachlein, do you know whose those are?

A. Those are in my handwriting, sir.

Q. And represent the total of the claim?

A. The total of the deficiency, the total of the penalty, and the total of the six per cent or the penalty under Section 294.

Q. A total as of that date claimed by the Government of $52,257.68?

A. That is right, if my addition is right.

Q. Yes, sir. Now, the date of this letter is March 31, 1950, and the receiving stamp is April 1, 1950. Now, when did you first meet Hans Forster?

A. I met Hans Forster on March 30, 1950, at my office.

Q. When first did you have knowledge, that is, in any professional way, of an individual by the name of Hans Forster, in connection with this matter?

(Testimony of George F. Kachlein, Jr.)

A. I don't quite understand "in connection with this matter."

Mr. Griffin: I will withdraw that question.

Q. (By Mr. Griffin continuing): Will you state to the Jury what occurred and how you happened to meet Mr. Forster? A. Yes, I will.

Q. If you will.

A. On the 29th of March 1950, Mr. Taylor called me by telephone and stated that he wanted to have a conference with me and to meet a Mr. Hans Forster as Mr. Forster had some corporate minutes or corporate records to discuss. Prior to that time, however, I had heard of Mr. Forster from Mr. Taylor over a period of, well, I would say several years. By that I mean probably two years. He had talked from time to time with me about the various people whom he did work for and took great pride in representing a Mr. Forster and Mr. Forster's businesses so that I did know of Mr. Forster but I had never met him in person nor did I have anything from a legal standpoint to do with him until the following day, which was March 30, 1950. In addition I had heard about Mr. Forster from a Mr. Clarence Hagstrom, the chap who testified earlier in the case. Mr. Hagstrom is an insurance man and Mr. Hagstrom had talked to me at one time in 1949 stating [4949] that he had been doing some work for a Mr. Forster and was hopeful that sometime he might bring him to our office as he felt he needed some assistance in forming some family trust and an insurance program.

(Testimony of George F. Kachlein, Jr.)

Mr. Moriarty: This is a point unresponsive and entirely unrelated what Mr. Hagstrom said to him.

Mr. Griffin: I will proceed.

The Court: I believe that is correct.

Q. (By Mr. Griffin): With the conference with Mr. Taylor——

Mr. Moriarty: (Interposing) I move that that part referring to Hagstrom be stricken.

Mr. Griffin: I asked the question originally and I think Mr. Kachlein was answering whether he heard of Mr. Forster.

The Court: I think the portion relating to Mr. Hagstrom's conversation should be stricken.

Mr. Kachlein: Sorry, your Honor.

Q. (By Mr. Griffin continuing): Now, Mr. Taylor called you for a meeting with Mr. Forster?

A. Yes, sir.

Q. And when was that conference held?

A. That conference was held the following day on [4950] March 30, 1950.

Q. And who was present?

A. Mr. Forster and Mr. Taylor and myself.

Q. Was that the first time, March 30, 1950, that you ever personally met Hans Forster?

A. To the best of my knowledge and recollection it certainly is.

Q. It is the first time, so far as you know, that Mr. Hans Forster had any professional business in your office? A. Yes, sir.

Q. With your firm, I mean?

A. With our firm or myself.

(Testimony of George F. Kachlein, Jr.)

Q. Had Mr. Taylor brought you, in October or November, 1949, or at any time prior to March 30, 1950, any books or records of any of Mr. Forster's enterprises, Finstad and Utgard or any others?

A. No, sir.

Q. Had you ever heard of Finstad and Utgard?

A. No, sir.

Q. Until March 30, 1950?

A. That is correct.

Q. And did this conference on March 30, 1950, with Mr. Forster have anything to do with [4951] taxes? A. It did not, sir.

Q. What was the business for which Mr. Taylor brought Mr. Forster to your office?

A. There were two phases to it. One was a general resume of the businesses which Mr. Forster owned, or had an interest in. He told me that——

Q. (Interposing) Let me stop you there for a moment. Did you make a memorandum at the time of this first meeting with Mr. Forster?

A. I made a pencilled memorandum as he was talking and converted it into a typewritten memorandum, I believe, on April 1, 1950.

Q. Was that the usual practice by you and your firm in dealing with a new client, or possible client?

A. Yes. We tried to do it particularly where there were a number of items discussed in which some of them were substantial in nature.

Mr. Griffin: Will you mark this memorandum for identification, please?

(Testimony of George F. Kachlein, Jr.)

The Clerk: Defendants' Exhibit Number A-144 marked for identification.

(Defendants' Exhibit A-144 marked for identification.) [4952]

Q. (By Mr. Griffin): Handing you A-144 for identification, is that your office copy of the memorandum made at that time, one of the office copies?

A. Yes, it is; it is the original.

Q. Now, will you proceed to tell the Jury the nature of that conference and its purpose?

A. As I started to say, it was in two phases. One was to give me a general picture of Mr. Forster's holdings. It started out by telling about his interest in Alpine Dairy, Issaquah Creamery, Alpine Ice Cream Company, Finstad and Utgard, Puyallup Creamery or Simonson and Forster as it has been used here, Renton Ice and Ice Cream Company, the general nature of the business and of these businesses and the ownership which Mr. Forster had in them, the purpose being to give us a general idea of his operations so that in the event any matter came up during the time that Mr. Taylor was serving sentence, if he was required to do so, that someone would have some legal knowledge in general of his holdings. Furthermore, to provide for an assistant secretary or assistant treasurer for these companies as Mr. Taylor was assistant—as Mr. Taylor was either secretary or treasurer of these companies, [4953] or both, so that someone would be on hand with which to take care of the normal, routine work that needed to be done and

(Testimony of George F. Kachlein, Jr.)

also at the same time was brought in the Finstad and Utgard matter with regard to the acquiring from Mr. Croson, an attorney, of certain stock which had been placed in escrow with him which has been testified to in this matter before for us to prepare the necessary papers to get the stock out of escrow.

Q. The Finstad and Utgard stock as of that time had been paid for and the matter now closing——

A. (Interposing) I was told that it had been paid for and that all that needed to be done was to obtain the stock from Mr. Croson. I called Mr. Croson at that time. He said he would have to get the file out and call me back later.

Q. Now, you say that Mr. Taylor attended this conference with Mr. Forster?

A. Oh, yes, he brought him in, sir.

Q. Was Mr. Taylor on bond, out on bail bond awaiting sentence at that time?

A. He was, sir.

Q. From whom did you obtain most of your information in this conference, or was it from both, or how? [4954]

A. Well, the information was obtained from Mr. Taylor insofar as the holdings were concerned and a general picture of the financial set up of these corporations. I was amazed to find, frankly, the size of the businesses.

Mr. Griffin: I offer in evidence Exhibit A-144.

Mr. LeSourd: I will object to this one, your Honor. He has outlined in detail——

(Testimony of George F. Kachlein, Jr.)

Mr. Griffin: I will not urge it.

Mr. Moriarty: We haven't seen it, your Honor.

Mr. Griffin: I am sorry.

The Court: You are withdrawing your offer?

Mr. Griffin: Yes, your Honor, I will withdraw the offer.

Q. (By Mr. Griffin): What was stated to you by Mr. Forster or Mr. Taylor at that time, if you can segregate one from the other, as to the stock ownership of Finstad and Utgard?

Mr. LeSourd: Objected to as irrelevant and immaterial. This is 1950, your Honor. This is going beyond now the whole subject of this phase of [4955] the case.

The Court: I don't know what the purpose of it is. As to the issues involved in the charge it would not have any connection.

Mr. Griffin: It goes to the credibility of Mr. Taylor here in statements made; this one particularly.

The Court: I will overrule the objection and consider a motion later and I will advise the Jury that testimony regarding Finstad and Utgard is not to be considered in connection with the charge of tax evasion as set forth in the Indictment. You may proceed.

A. I was advised by Mr. Taylor that the ownership in Finstad and Utgard was one hundred per cent Mr. Forster as of that date, sir.

Q. (By Mr. Griffin): Yes, sir; now——

The Court: (Interposing) Again, Members of the Jury, just so that it is clear, all this testimony

(Testimony of George F. Kachlein, Jr.)

has a bearing on the credibility of either Mr. Forster or Mr. Taylor.

Q. (By Mr. Griffin continuing): Now, on or about April 4, 1950, did you have—do you recall a conference with [4956] Mr. Taylor in regard to his license in the State of Washington?

A. I do, sir.

Q. And will you tell the Jury did you have a conference with him about it?

A. I don't recall whether it was a conference or a telephone conversation but Mr. Taylor did advise me that he had received a letter from the State Accounting Board whereby they had notified him that his license was suspended and that if he desired to have a hearing on the matter he could do so. Mr. Taylor asked me what rights, if any, he would have with respect to the practicing of accounting in the event of the suspension of his license and what action he could take as of that time with regard to a hearing. We—I think that is about all that took place at that date, sir.

Q. Will you follow through as to that as to anything you did in that connection in behalf of Mr. Taylor as to the license?

A. Yes. I checked the statute, or had one of the men in the office check the statute, to find out what rights he had both as to a hearing and as to practicing even though a suspension was under way, and advised Mr. Taylor of that. Furthermore, I was [4957] contacted by Mr. Comer, C-o-m-e-r (spelling) I believe is the spelling of it, who was the

(Testimony of George F. Kachlein, Jr.)
Secretary of the State Accounting Board, and he asked me if Mr. Taylor would desire to have a hearing as of that time and what the status of his case was with respect to the Government. That is, the United States against L. Hicks Taylor. I advised him. Mr. Taylor and I discussed it further and following that I wrote to Mr. Comer in behalf of Mr. Taylor, with Mr. Taylor's approval, advising him of the position of Mr. Taylor, namely that we desired that we have a hearing subsequent to the time that final action was had on the sentencing of Mr. Taylor before Judge Leavy and that when the matter was finally determined in his criminal case then we would like to have the hearing.

Q. Was that arranged? Were you endeavoring to arrange it so that Mr. Taylor could personally appear before the Board, or whatever it is, in his own behalf? A. That is correct.

Mr. Griffin: Will you mark this?

The Clerk: Defendants' Exhibit Number A-145 marked for identification.

(Defendants' Exhibit A-145 marked for identification.) [4958]

Q. (By Mr. Griffin): And that, of course, could not be done while he was at McNeil Island?

A. That is correct.

Q. And is that what Mr. Taylor wanted to do, to make a personal appearance?

A. He certainly did.

Q. Handing you Exhibit A-145 for identification I will ask you if that is your office copy of April

(Testimony of George F. Kachlein, Jr.)

18, 1950, to the State Board of Accountancy, attention Mr. Comer, in regard to this matter?

A. Yes, it is.

Q. And was a definite arrangement made that no hearing would be had in regard to the suspension of Mr. Taylor, or any petition for reinstatement until after he had terminated his sentence?

A. No, at that time there was no arrangement along that line, Mr. Griffin. The only understanding that we had was to the effect that he would be given the opportunity to attend and be heard at a hearing after the case of United States against Taylor was finally determined, and that was not only after consultation with Mr. Comer, but also with another member of the State Accounting Board. [4959]

Mr. Griffin: I offer A-145.

Mr. LeSourd: No objection.

Mr. Moriarty: Except our usual objection, your Honor, that it is immaterial and entirely outside the issue.

The Court: The objection may show on the part of the Government. There being no objection from Mr. Taylor it may be *omitted.*

(Defendants' Exhibit A-145 admitted in evidence.)

Mr. Moriarty: We have inspected 144 and except for the same objection we have no objection.

Mr. Griffin: Well, on Counsel's objection I withdrew the offer of A-144. That was Mr. LeSourd's objection.

(Testimony of George F. Kachlein, Jr.)

Exhibit A-145 is dated April 18, 1950, attention Mr. Roy C. Comer. I read the last paragraph:

"It is the understanding of the undersigned and Mr. Taylor that this suspension shall remain in effect until final action is taken by the U.S. District Court in the Case of United States vs. L. Hicks Taylor, No. 16043, and that after such action is taken by said Court, the matter will then be up for further consideration by [4960] your Board, at which time Mr. L. Hicks Taylor will be afforded the opportunity of a hearing. In the meanwhile however, his license to practice as a Licensed Public Accountant is suspended."

Q. (By Mr. Griffin): Now, on—did you have a conference on or about April 17, 1950, with Mr. Coventry the Probation Officer in regard to Mr. Taylor and the contents of a letter which you had written him, which is in evidence?

A. I did, sir.

Q. As Exhibit A-142?

A. I did, sir, in Tacoma.

Q. And did you also confer with Mr. Sager?

A. I did, sir, at the same time in Tacoma.

Q. Then on or about April 18, 1950, was—did you, as attorney for Mr. Taylor, arrange with Mr. Sager for the sentencing of Mr. Taylor?

A. Yes, I did.

Q. And do you recall what date that sentence was to come on?

A. It was to come on April 25th at 10:00 a.m. in the morning, 1950.

(Testimony of George F. Kachlein, Jr.)

Q. In connection with the matter of sentence on April 18th, do you recall any conference with Mr. [4961] Taylor?

A. I don't know whether it was at that exact date or not but I had a conference with him because I had to prepare a statement that would be made in his behalf at the sentencing on the 25th.

Q. And did you go over with him the matter of the statement that you would make and that he would make to the court? A. I did, sir.

Q. And was the statement that he was to make satisfactory to you as his attorney and the one that you were to make satisfactory to him as your client?

A. So far as I knew, Mr. Griffin.

Q. Now, between April 18th and 19th and the date of sentence, April 25th, did you prepare a will for Mr. Taylor?

A. I did, sir, about the 22nd of April, as I recall. It was executed in my office on a Saturday morning.

Q. Now, on April 24th, the day before the sentence, did you have a conference with Mr. Taylor?

A. I don't know whether I had a conference with him or a telephone call, Mr. Griffin. I do know that I had one or the other, sir.

Q. Was there a Mr. Hall in your office? [4962]

A. Yes, there was, Ford Hall.

Q. Does that refresh your recollection as to any conference or telephone call? A. It doesn't.

Q. All right. Now, on April 25th what occurred?

A. On April 25th I——

(Testimony of George F. Kachlein, Jr.)

Q. (Interposing) Let me stop you there, before I go to April 25th.

Between the time of your first introduction to Mr. Forster on March 29, 1950 or March 30th—March 30, 1950, and April 28th, during that approximate month, did anything arise as between you and Mr. Taylor in connection with any tax matter of Mr. Forster?

A. Yes, there was one item that was called to my attention, somewhere between the 20th and the 25th of April, which dealt with the stock ownership of Finstad and Utgard and had relation to taxes. I had——

Q. (Interposing) Well, I won't ask you for any detail in that regard. That is the one item that arose?

A. That and the subsequent item was, as I recall, the afternoon of April 24th, the day [4963] before the sentencing. I did contact Mr. Taylor by telephone with respect to a telephone call I had had from Mr. Forster dealing with the investigation.

Q. All right; will you relate that? That is the incident I want you to relate to the Jury at this point.

Mr. Griffin: Mr. Moriarty says it is recess.

The Court: All right. Ladies and Gentlemen of the Jury: We will now take the mid-morning recess and the Court calls your attention to the admonition given you on similar occasions and asks that you heed it on this occasion.

You may now be excused.

(Testimony of George F. Kachlein, Jr.)

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 11:01 o'clock, a.m., a recess was had until 11:17 o'clock, a.m. May 6, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated. [4964]

It is stipulated that the Jury and all Defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Q. (By Mr. Griffin continuing): I think, Mr. Kachlein, you were dealing with April 23rd, or April 24th, just before the sentence on April 25th and you had had a telephone call from Mr. Forster.

A. That is correct.

Q. What date was that?

A. That was on April 24, 1950.

Q. And that would be the Monday before the sentence on Tuesday then?

A. That is right.

Q. What was that call?

A. Mr. Forster called and advised me that a Treasury Department Agent had contacted him, a Mr. Marx, stating that he desired to examine the books and records of Mr. Forster and certain of his

(Testimony of George F. Kachlein, Jr.)

companies and that he had related that information to Mr. Taylor—to Mr. Taylor and that Mr. Taylor had stated, in effect, that they couldn't examine the books [4965] while Mr. Taylor was away as Mr. Taylor was the one that had them and knew all about the matter and that he didn't see how that could be done. Mr. Forster stated that he was disturbed about that position and what did I think about it. I told him that if the Government had determined to examine the books and records they were going to be examined and that something should be done to see that that was carried out immediately and that I would call Mr. Marx, providing it was satisfactory with Mr. Forster, and arrange for a date for a meeting to discuss it with him.

Mr. Forster stated it was satisfactory to him and that he was terribly concerned and didn't know which way to turn. I made the suggestion that it might be handled by employing a firm of accountants to look into the matter and assist him in the event of an investigation by the Government.

That was the conversation, in effect, that I had with Mr. Forster.

Q. Did Mr. Marx advise you they were investigating all the accounts of Mr. Taylor?

Mr. LeSourd: Objected to, your Honor, on the grounds this is not a conversation with Mr. Marx.

The Court: Objection sustained.

Q. (By Mr. Griffin continuing): Did you talk to Mr. Taylor about Mr. Forster's call?

(Testimony of George F. Kachlein, Jr.)

A. Yes. I called Mr. Taylor that afternoon. I had two things in mind. One was Mr. Forster's call and the other was to be set for the next day going over there. And then in discussing Mr. Forster's call I told him the conversation I had had and told him I didn't think we could postpone the examination until such time as he would return from prison and we didn't know at that time what his sentence, if any, would be. Therefore, I asked him to consider whether or not we should employ, in behalf of Mr. Forster, an accountant and discussed with him the possibility of taking some national accounting firm and that we would discuss it further as we went to Tacoma the next day.

Q. At about that time was a conference arranged with Mr. Marx?

A. I called Mr. Marx that afternoon also and told him I had had the conversation with Mr. Forster and as I was going to Tacoma the next day on the Hicks Taylor case I would appreciate it if we could have the conference the following day and it was arranged [4967] for ten o'clock in my office on Wednesday, April 26, 1950, which was satisfactory to him.

Q. Did you drive Mr. Taylor to Tacoma on April 25th?

A. Yes, I did. I picked Mr. Taylor up at his home and took him to Tacoma. Our appearance was set for ten o'clock in Judge Leavy's court in Tacoma.

Q. Now, on the way over did you have any dis-

(Testimony of George F. Kachlein, Jr.)

cussion with Mr. Taylor about this contemplated investigation by the Government of Mr. Forster's tax matter?

A. Yes, we had quite a lengthy conversation about it. It dwelt first on how the investigation would be handled in behalf of Mr. Forster. I told him I felt it was essential that we employ a reputable well-known national accounting firm to handle this matter by reason of the size of the operation due to the fact that Mr. Taylor who had been handling the books was not going to be there and suggested several names of national firms. Mr. Taylor, after listening to the suggestions that were made, indicated that he would prefer to have the firm of Touche, Niven, Bailey and Smart, the present accountants that Mr. Forster has, for two reasons: [4968]

One was that Mr. Alkire, who was one of the senior men in the firm, was formerly a government man and knew the routine of examination conducted by the government; and the second thing was that Mr. Tremper was on the accounting board and maybe by turning over some business to him of this nature it would help, *by* helpful, to him when his case on suspension would again be heard before the accounting board and we agreed mutually that I should recommend to Mr. Forster in behalf of Mr. Taylor and myself that that firm be employed and that firm carry out the investigation work in behalf of Mr. Forster and the accounting work.

We discussed how the work could be carried out.

(Testimony of George F. Kachlein, Jr.)

Mr. Taylor took the position—he felt—that even if they did come in, true they could keep the books and records going but insofar as the previous years were concerned it was going to be difficult for them to understand the transactions that had been going along but that he had taken out to Issaquah Creamery all the books and records and working papers that he had in his office and they would be there and available for their use in connection with the investigation.

Q. By "their use", who do you mean? [4969]

A. The accountants, any person who needed to go into the records to determine whether or not the taxes were properly reported.

Q. By the way, had you up to that time, which is now April 28th——

A. (Interposing): 25th.

Q. (Continuing): ——25, 1950, had you ever seen any of the books, records, working papers, or anything else of Hans Forster, Issaquah Creamery, Alpine Dairy?

A. No; none whatsoever with the exception of, I believe, the minute book and stock book of Finstad and Utgard.

Q. And when did you first see the minute book and stock book of Finstad and Utgard?

A. Well, I know it was not earlier than March 30th and I am quite sure in my mind that they were brought in that date. It may have been a day or two later. I am not certain of that.

Q. March 30th——

(Testimony of George F. Kachlein, Jr.)

A. (Interposing): March 30, 1950, sir.

Q. Now, at Tacoma at the time of sentence did Mr. Taylor make a statement in his own behalf of the nature you had gone over with him before?

A. Yes, he did, sir. [4970]

Q. Did he state he was very negligent in keeping his own records, and careless?

A. Yes, he did.

Q. And did you make a statement in his behalf?

A. Yes, I did, sir.

Q. And was that in part upon the same basis that Mr. Taylor had made his statement?

A. Yes, it was in part on that, yes, sir.

Q. Now, Mr. Taylor was sentenced that day?

A. He was sentenced that day, sir.

Q. Now, when you returned to Seattle, did you contact Mr. Forster in relation to this matter of the investigation and accounting?

A. I did, sir, and gave him a report of our conversation. That is, the conversation between Mr. Taylor and myself with respect to the accounting firm of Touche, Niven, Bailey and Smart.

Q. And did you receive any——

Mr. Griffin: Strike that.

Q. (By Mr. Griffin continuing): Did Mr. Forster advise you what he determined to do with reference to the employment of accountants then?

A. He said inasmuch as Mr. Taylor and I approved [4971] the accountants for me to go ahead and contact Mr. Tremper's office to see if they would be available to take on the job.

(Testimony of George F. Kachlein, Jr.)

Q. Then Mr. Forster did employ the accountants? A. That is right, sir.

Q. Then there was this conference that has been testified to here between Mr. Marx and the accountants and, I think, yourself and Mr. Forster on April 26, 1950? A. Yes, sir.

Q. Insofar as on that same date do you recall anything that you did in behalf of Mr. Taylor in regard to his civil liability?

A. Yes. As of that date I received a letter from Seth Stockton, who was then the Internal Revenue Agent, requesting extension of time for the determination of tax liability of Mr. and Mrs. Taylor and I believe I wrote him a letter on or about that date advising him that Mr. Taylor was at McNeil Island serving sentence but if he would forward the request over there, as it has to be signed by the taxpayer himself, I was sure he would do so.

Q. Now, was there any time limit involved in this matter of trying to protect Mr. Taylor in his [4972] personal income tax, on the civil side I mean?

A. Yes, there were several things. One which was pending at that time was a ninety day letter had been received by his wife, Mrs. Taylor, for the years 1946, and I believe 1945. Now, a ninety day letter, I mean by that a notice of an income tax deficiency wherein the taxpayer is given a period of ninety days with which to file a protest, or a petition, before the Tax Court of the United States for a determination of the tax and time was

(Testimony of George F. Kachlein, Jr.)
running out with respect to that. Secondly, interest was accruing on the unpaid portion of the tax deficiency and both Mr. Taylor and myself recognized there was substantial deficiencies. We were trying to get those straightened out to stop the running of the interest payments.

Q. Were you able—did you eventually file for Mr. Taylor and Mrs. Taylor a petition or protest in regard to the taxes?

A. Yes; in the month of May, the latter part of it, I filed a petition before the Tax Court in behalf of Mrs. Taylor to redetermine her tax liabilities for the year 1945 and 1946, and in the month of June I prepared and had Mrs. Taylor and Mr. Taylor execute petitions to the Internal Revenue—not petitions but [4973] protests—to the Internal Revenue Agent with respect to the income tax liabilities for the years 1942, 1943, 1944, 1947, and for Hicks Taylor for the years, the same years, together with 1945 and 1946. There was quite considerable correspondence between myself and Mr. Stockton, the Internal Revenue Agent, with respect to attempting to get a delay to file the protest until Mr. Taylor had returned, and on his instructions he told me to do the best I could with what information I had available and that when Mr. Taylor returned from prison that he would then have an opportunity to file a supplemental protest.

It was a matter that had gone on in correspondence between the latter part of March, 1950, and

(Testimony of George F. Kachlein, Jr.)
until these petitions had been—and protests had been—filed the latter part of June, 1950.

Q. With Mr. Taylor at McNeil Island were you able to get all the information that you required for a complete—what would ordinarily be a complete—protest or petition?

A. No. I attempted to get that. I went out one afternoon either in the latter part of May or the first part of June and met with Mrs. Taylor and asked——

Q. (Interposing): At their home? [4974]

A. At their home, and asked Mrs. Taylor to go through Mr. Taylor's papers, of if I could go through them, to find out if there were some work papers and books in connection with his income tax returns, as he had worked up figures, to try and determine his eventual liability and I obtained from her, if my memory serves me right, his cash book, or journal, whatever it may be called, or time book, and his working papers—oh, I would say they were twenty, maybe twenty, sheets—and took them back to the office with me and went through those to try and figure out what the taxes were that he felt that was due and owing. I couldn't do that so I filed what is known as a skeleton-type protest. It is one where you protest the amount and give very simple reasons but you don't give any basic figures because I didn't have the facts.

Q. And that skeleton protest was filed awaiting for you to get the information to file a real one?

(Testimony of George F. Kachlein, Jr.)

A. That is correct and with the full approval of Mr. Stockton.

Q. Now, these papers that you went out to Mr. Taylor's home and conferred with Mrs. Taylor about, do I understand those were the personal papers [4975] of Mr. Taylor dealing with his own personal income tax return?

A. Yes, Mr. Griffin.

Q. Did they have any relation of any kind, nature or description to the examination of Mr. Forster? A. None whatsoever, sir.

Mr. Griffin: Will you mark these three letters as one exhibit, please?

The Clerk: Defendants' Exhibit Number A-146 marked for identification.

(Defendants' Exhibit A-146 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-146 for identification I will ask you if the first is the letter of May 2, 1950, from Mr. Stockton, Internal Revenue Agent in Charge, to Mr. Taylor dealing with this matter?

A. Yes, it is.

Q. The second letter of May 2, 1950, is a duplicate of the first letter, is it not?

A. No, it is not. It has a different date in here for the years involved.

Q. The years involved, but also to Mr. Stockton —or Mr. Taylor? [4976]

A. It is identically worded otherwise.

(Testimony of George F. Kachlein, Jr.)

Q. And the third letter for the same date from Mr. Stockton to Mrs. Taylor?

A. That is right.

Q. These are familiarly known as the thirty-day letters in which you have thirty days to protest?

A. That is right, sir.

Q. And if you don't——

A. (Interposing): I believe that is. I didn't read the full context of it.

Mr. Griffin: I offer A-146.

Mr. Moriarty: Same objection, if your Honor please. It is entirely immaterial.

The Court: No objection from you, Mr. LeSourd?

Mr. LeSourd: No objection.

The Court: There being no objection from Mr. Taylor's Counsel the exhibit will be admitted on the same conditions as similar exhibits heretofore admitted.

(Defendants' Exhibit A-146 admitted in evidence.)

The Clerk: Defendants' Exhibit Number A-147 admitted in evidence.

(Defendants' Exhibit A-147 [4977] marked for identification.)

Q. (By Mr. Griffin): A-146 closes: "Your attention is called particularly to that part of the above-identified letter advising you that if no response is received within the 30-day period, a statutory notice of deficiency will be sent you."

A. That is correct.

Q. Handing you Exhibit A-147 I will ask you

(Testimony of George F. Kachlein, Jr.)
if that is a letter from Mr. Taylor to you dated May 3, 1950?

A. Yes, it is, which I received on May 6th.

The Clerk: Defendants' Exhibit Number A-148 marked for identification.

(Defendants' Exhibit A-148 marked for identification.)

Mr. Griffin: I offer A-147.

Mr. Moriarty: Same objection.

The Court: 148? 147?

Mr. LeSourd: No objection.

The Court: A-147 may be admitted.

(Defendants' Exhibit A-147 admitted in evidence.)

Mr. Griffin: May I read this letter, if the Court please?

A-147 is dated May 3, 1950, and shows a [4978] stamp received May 6, 1950, from L. Hicks Taylor to George F. Kachlein, 600 Central Building.

"Dear George:

"The boys are getting pretty swift now that I am over here, guess they are afraid of their calculation because they know they cannot substantiate their figures. Hope you can extend this thirty day letter so we can prepare a definite protest which will knock their figures in a cocked Hat. When I receive these letters they make you boil two days after I am committed here.

"Do we not have any rights until our release from here.

"I mailed you 872 last night and this tonight,

(Testimony of George F. Kachlein, Jr.)

so now George give them everything you have and extend the time so I can prepare a definite protest and make the boys sweat a little too like I am. Getting along alright here, turning farmer alright. Give my regards to everybody. Hicks."

Q. (By Mr. Griffin): That 872 is that a form?

A. That is a form consent for extension of time.

Q. Handing you Exhibit A-148 for identification I will ask you if the first is your office copy of a letter of May 8, 1950, to Mr. Stockton?

A. It is, sir. [4979]

Q. And the second letter from Mr. Stockton to you of May 9, 1950?

A. It is, sir.

Q. And the third, office copy, your letter to Mr. Stockton, June 7, 1950? A. It is.

Q. Next office copy, your letter to Mr. Taylor, June 9, 1950? A. It is.

Q. And the last copy your letter to Mr. Cavanah, Supervisor, Classification & Parole, McNeil Island, re Hicks Taylor, June 19, 1950?

A. It is, sir.

Q. All dealing with this matter to which you have been testifying?

A. It is, sir. They are, rather.

(Whereupon, there was a brief pause.)

Mr. Moriarty: Are they offered, Mr. Griffin?

Mr. Griffin: I am offering them now.

Mr. Moriarty: Same objection.

Mr. LeSourd: No objection.

The Court: There being no objection from Mr.

(Testimony of George F. Kachlein, Jr.)

Taylor's Counsel the Court will admit the exhibit on the same ground and for the same purpose [4980] as those admitted earlier this morning.

The Clerk: That is A-148, your Honor?

The Court: That is A-148.

(Defendants' Exhibit A-148 admitted in evidence.)

Mr. Griffin: A-148, the first letter, May 8, 1950, from Mr. Kachlein to Mr. Stockton seeks additional time for filing the protest and explaining conditions why.

The second letter is from Mr. Stockton dated May 9, 1950, to Mr. Kachlein in regard to the matter of extension and directing that that be filed by June 7th and then consideration be given to additional time for a full hearing on the petition.

So, on June 7, 1950, Mr. Kachlein to Mr. Stockton, dealing with the telephone conversation for additional extension.

June 9, 1950, Mr. Kachlein to Mr. Taylor:

"Dear Hicks:

"Am enclosing herewith Protests which I have prepared in quadruplicate for your signature. You will note that there are two sets of Protests, one covering your individual income tax returns for the years 1942, 1943, 1945, 1946 and 1947, and the other covering the joint return [4981] of you and Mrs. Taylor for the year 1944.

"Will you kindly review these, and if you find them in order, execute the same. It is important

(Testimony of George F. Kachlein, Jr.)

that immediate action be taken on the same as we only have until June 14th to file these Protests.

"We have arranged with the Internal Revenue Agent that if such protests are filed, you will at a later date, upon your release from the penitentiary, be given an opportunity to file a Supplemental Protest. In order to prevent a 90 day letter being issued, it is essential that we file these protests at once. Should you deem any statements contained therein are inaccurate, will you please make penned changes on each and initial the same. I will then have Mrs. Taylor likewise initial the 1944 one, and have her execute it also.

"In the execution of these protests, be sure to execute three sets, and have your signature acknowledged before a notary public.

"With kindest regards and best wishes, I remain, Sincerely."

"P.S. Enclosed is one extra set for you."

Q. (By Mr. Griffin): Those enclosures were made, were they?

A. They were, sir, and sent.

Q. And the last letter, June 16, 1950 a thank you letter to the supervisor for assisting in handling [4982] some matter and including—and in which you returned, duly executed, the codicil attached thereto. Did you draw a will for Mr. Taylor and—or a codicil, rather, and a will for Mrs. Taylor?

A. Yes, sir.

Mr. Moriarty: Objected to as repetitious.

(Testimony of George F. Kachlein, Jr.)

The Court: The codicil I don't think was covered before.

Q. Now, in connection with the office arrangement that Mr. Taylor had and referred to in your memorandum to the Government, Exhibit A-139, did——

The Court: Do you need it?

Mr. Griffin: No, I don't need it.

Q. ——did you have a conference with the associates of Mr. Taylor on or about June 28, 1950, in regard to how the office matter should be conducted of Mr. Taylor?

A. I did, Mr. Griffin.

Q. And there is in evidence A-74, memo for file, re L. Hicks Taylor, introduced in Mr. Taylor's case. Will you explain to the Jury just what that situation was and the advice given?

A. This memorandum I dictated in the presence of Mr. Benedict and Mr. Slater. Mr. Benedict and Mr. Slater were associates of Mr. Taylor. They had come to my office that day to discuss with me the office matter in connection with L. Hicks Taylor and Company. Prior to the time [4983] that Mr. Taylor went to McNeil Island Mr. Taylor had told me that in the event of any office problems arising he had instructed his men to come down to see me and that I would be the final judge in regard to any of the matters that arose as to what they should do. These men likewise stated to me when they came down that Mr. Taylor had stated in case any matters came up they should see me and whatever I

(Testimony of George F. Kachlein, Jr.)

determined to do would be satisfactory. They came down to see me because they were concerned over the fact that Mr. Taylor's license had been suspended to practice as a licensed public accountant and that the company of L. Hicks Taylor and Company had held itself out as doing tax work and audit work and doing accounting work and doing accounting work of all natures and these men themselves had a licensed L.P.A. certificate, or a Licensed Public Accountant certificate, issued by the State of Washington and they were worried as to work they had performed in Mr. Taylor's absence for L. Hicks Taylor and Company and billed as L. Hicks Taylor and Company, that they might be in violation of the State law and, likewise, Mr. Taylor might be in violation of the State law. I was familiar with the arrangements at that time, at least I thought I was [4984] with the arrangements which he had between his associates as during his income tax examination I had drafted, to reduce to writing, an oral arrangement that he and his associates had had. This arrangement is important to this matter here so if I may have permission to explain it I would like to do so.

Q. All right. Go ahead.

A. It is an agreement whereby Mr. Taylor and certain named associates set forth in writing what their arrangement was, which was this:

That he would turn work over to the associates and whatever work they performed as associates each would receive each month, if he received pay-

(Testimony of George F. Kachlein, Jr.)

ment for the work performed, two-thirds of the amount which was billed to the client, and the other one-third would go into a bank account in Mr. Taylor's name but for the account of the specific associate who was performing that work. That money would stay there until such time as the parties mutually agreed to release it or at such time as the associates left the firm and if the associates did not take the accounts away for the period of a year all that one-third would be turned over to the associate so that the associate would wind up with one hundred percent of the money. I knew of that arrangement [4985] and it was one reduced to writing. So that when these men came in they said they were bothered about the billing and how should they handle it in view that Mr. Taylor's license was suspended. As a result of our conference it was my best judgment that what should happen during the time Mr. Taylor was away from the office and had his license suspended and pending his return to the office was that the men should bill the clients in their own name and the funds which they received from the clients they should retain themselves until such time as Mr. Taylor returned. At that time then, between themselves and Mr. Taylor, they would work out the reasonable rental of the space they used and the reasonableness of any other matters which Mr. Taylor's office made available to them. Then, in addition, I stated that, of course, this was a temporary arrangement that was subject to the

(Testimony of George F. Kachlein, Jr.)

final approval of Mr. Taylor when he returned, stating at the end of it:

"* * * as this is but a temporary measure pending Mr. Taylor's return all matters will be subject to adjustment upon his return."

Q. Now, in doing that were you endeavoring to protect Mr. Taylor in the matter of restoration, [4986] if possible, of his own license?

A. Very much so.

Q. Did you take every step in the matter of the civil tax liability of Mr. Taylor that was necessary in your opinion to protect him in all of his legal rights?

A. I certainly did, sir, to the best of my ability.

Q. Now, in regard—there was some testimony in regard to Mr. Jack Taylor circulating a petition in regard to this suspension or restoration of license. Will you tell the Jury what you did in that particular when you heard about it?

A. Yes, sir. I was advised by Mr. Forster by telephone in one of the several calls that I had with him that he had been requested by Mr. Jack Taylor, the brother of L. Hicks Taylor, to sign a petition, or to join with him in petitioning, to get back for him his suspended license to practice as a licensed public accountant, to have the suspension lifted. That information came to me either on the 17th of August or 18th, I don't recall which, but it was during one of the conversations I had with Mr. Forster. I had had a telephone call from Mrs. Taylor on August 18th that she wanted to see me with

(Testimony of George F. Kachlein, Jr.)

[4987] respect to the making of a will. I was going —it was on a Friday. I was going to our beach place that we have on Whidby Island and I said I would drop by on the way up to find out what she had in mind. I had this meeting on the 18th in the afternoon and discussed the making of her will and also called to her attention that I was very much disturbed that Mr. Jack Taylor was circulating a petition to have the suspension of Mr. L. Hicks Taylor's license removed, that we had worked out an arrangement with Mr. Comer, who was Secretary of the State of Washington Accounting Board, whereby a hearing would be held at such time as Mr. Taylor, L. Hicks Taylor, was present to attempt to regain his license and that I felt that having some one going out circulating a petition was contrary to the letter arrangement which, I believe, has been introduced in evidence here that we had with Mr. Comer, and she told me she was going to be writing to Mr. Taylor and that she would so advise Mr. L. Hicks Taylor.

Q. In your best judgment was it an inappropriate time to be circulating such a petition while Mr. Taylor was still at McNeil Island?

A. That is right, it was, sir. [4988]

Q. Going back now to April, the conference with Mr. Marx on April 26, 1950, at which time Mr. Tremper, you and Mr. Alkire and Mr. Forster were present, do you recall any statements made by you with reference to the kind of bookkeeping of Mr. Taylor with which you were familiar from your

(Testimony of George F. Kachlein, Jr.)

experience with these other concerns?

A. I recall that we had a conversation while we were waiting for Mr. Forster to arrive. There was Mr. Alkire, Mr. Tremper and Mr. Marx. They arrived sharply at ten o'clock and came into my office and when Mr. Forster didn't arrive at the same time I placed a call for him to his office to see if he was on the way and was advised he was doing so, but we discussed then what was rather current interest to all concerned, namely the action which had been taken in Tacoma the previous day in the sentencing of Mr. Taylor. Mr. Marx had done the investigating work on it and Mr. Tremper was on the State Board of Accountancy and we discussed what would cause a situation to arise and I took the same position which I had taken before the Court and taken before the Treasury Department, that his work was careless.

Q. Was that said in defense of Taylor?

A. Absolutely, sir. [4989]

Q. And that he was just careless and negligent without any intent on his part to defraud?

A. That is correct.

Q. Now, do you recall about when Mr. Taylor was expected to return to Seattle after serving a sentence?

A. Yes; he was expected to return around the 10th or 11th of September. He had a six months sentence and with good behavior he was to get off at an earlier date and Mrs. Taylor kept me fully advised.

(Testimony of George F. Kachlein, Jr.)

Q. Prior to his return and on or about August 29th did you have a conference with Mrs. Taylor with respect to his anticipated return?

A. Yes; Mrs. Taylor came to my office and had a conference with me stating he was coming back and that they were planning a trip and wondered what I thought about it.

Q. Was that trip a vacation trip?

A. That is right.

Q. And what did you advise her about it?

A. I told her I thought it was the best thing in the world for him to do. She had explained to me from time to time that he had worked hard and that she would like to see him enjoy life with her and go [4990] places like other friends had done and she was hopeful of buoying his spirits up by planning the trip and this was a part of the plan to help him regain his stature when he got back to the community.

Q. Did this August 29th also happen to coincide with the first appearance, so far as you know of Mr. Eppler in the investigation of Mr. Forster's tax returns?

A. The first time I met Mr. Eppler was on that date to my knowledge, sir.

Q. Up until August 29, 1950, was there any indication of any kind to you that—any statement, rather than indication, to you that there was any claim of criminal liability insofar as Hans Forster was concerned?

A. No, sir, not to the best of my recollection.

(Testimony of George F. Kachlein, Jr.)

Q. Now, in this intervening time between May and August 29th were the Touche-Niven accountants and Mr. Gorans making their inspection and audit of the books and records of Mr. Forster?

A. Yes, they were.

Q. Had any report been issued as yet?

A. No, no official report. Every time I would talk with anybody from the office I was told that the tax liability was rising steadily and I [4991] was terribly concerned then.

Q. And did it continue to rise?

A. It continued to rise to astronomical figures.

Q. Now, did you have a conference with Mr. Taylor on Wednesday September 13th, 1950, immediately after his return from McNeil Island?

A. Yes, September 13, 1950, Mr. Taylor and Mrs. Taylor came into my office pursuant to the arrangement that I had with her where we had a conference.

Q. And what was the nature of that conference?

A. The first thing we discussed was Mr. Taylor's treatment at McNeil Island and how he got along. We then discussed what their plans were, what they intended to do, the trip they were going to make. Mr. Taylor advised that he wondered if he was going to be held for the Forster case because they—meaning Mr. Eppler and Mr. Marx—had been over to see him and attempted to get a statement from him and he refused to give that statement without having advice of counsel. He wanted to know a little bit about the Forster case

(Testimony of George F. Kachlein, Jr.)
and where it stood and I told him there was a substantial tax liability according to Mr. Tremper's office. I gave him a [4992] short run down what I thought of the situation as of that time and he asked if it was essential that he stay and I said, no, it is better that he got back on his feet again and took his vacation and when he got back there would be ample time to work on the books. We also discussed what work he might do and he made the comment, "Well, if they want me to do work on it they are going to have to pay me for it." It was not a lengthy conference, Mr. Griffin. I advised him at the time that I didn't want him to talk to the Agents until such time as he got back from his trip and that if they attempted to contact him to be sure and get ahold of me. He also stated, and I think this occurred just before he went out to the office, that he wanted to get his working papers and his books, whatever I had, with respect to his own income tax matter as he felt he would like to do some work on that portion dealing with his tax liability and I don't know whether I delivered to him that day the work papers that we had in our exhibit file, or the following day, but I delivered to him one day or the other. At the same time I contacted Mr. Marx by telephone to see if we could get back from the Government some of the work paper, or papers, that they had picked up for use in connection with their income tax examination [4993] of his records.

Q. That is, of Mr. Taylor's own personal papers?

(Testimony of George F. Kachlein, Jr.)

A. That is right, sir.

Q. Did you consider as of that time that you were, in regard to advising him about a vacation, in regard to advising not contacting the Agents until he had been away and got some rest, that you were working in his own best interest?

A. I certainly did, sir, and as a matter of fact the vacation had been planned by Mrs. Taylor prior to any income tax criminal investigation.

Q. Now, when next after September 13, 1950, did you see Mr. Taylor?

A. I don't know whether I saw him on the 14th or not. I know I talked to him on the telephone to give him a report on the records that the Government might have and I don't know whether he came into the office or whether it was by telephone but I know I had a conversation with him on that day in the morning and reported that I had contacted both Mr. Marx and Mr. McCarthy. McCarthy being of the Special Agents' Office, and Marx of the Internal Revenue Agents'. That was the contact that was made.

Q. Then when was the next time that you saw [4994] him?

A. The next time I saw him was in my office on October 27th of that same year, 1950.

Q. Now, in between September 13th and October 27th, 1950, what had happened in connection with the audit of Mr. Forster's affairs; what had you learned or been advised in that interim in connection with Mr. Forster's examination, or this audit?

(Testimony of George F. Kachlein, Jr.)

A. Well, I had been—I was out of town about a little bit better than two weeks during that period. I had assigned Mr. Brody in our office, about the 25th or 26th of September to do some investigation work for us. About the 18th or 19th, or maybe it was the 20th, of October, Mr. Brody had given me a report which indicated that certain of the records of Issaquah Creamery had been improperly reported and that I should check into the matter myself. I then contacted Mr. Erickson, who was the bookkeeper, and went up and had a rather lengthy conversation with him in which he related to me substantially the same thing as he related on the stand here——

Q. (Interposing): Had you ever——

A. ——in——

Q. Let me stop you a moment there. On the same thing related here, are you referring to the increase [4995] in accounts payable to $51,000?

A. $51,000.00 Consolidated checks, the milk drafts, and the R. L. Stevenson checks.

Q. Had you ever met Mr. Erickson before that occasion, so far as you know?

A. I think I met him on a--on my first trip through the plant of Mr. Forster which I believe was on a Saturday in July, 1950, when he wanted me to go around and see his various plants and I met the personnel. I had never talked to him about the income tax matter until that date, sir.

Q. Did he give you what he claimed were the

(Testimony of George F. Kachlein, Jr.)

facts as between himself and Mr. Taylor in making the changes as testified to here?

A. It was very difficult to get the story out of him. He tried to tell but I couldn't understand it myself. It was just—it seemed so utterly ridiculous at the time but it indicated that there was definitely a difference of opinion between the parties, namely, one person was saying, well, he did something to the records, and the other person was saying he did something to the records.

Q. So you had then that information before you at the time of your final conference with Mr. Taylor on October 27th? [4996] A. I did, sir.

Q. Did you look at the books while you were out there so that you saw the physical changes?

A. No, I didn't, sir.

Q. All right; on that, when was the first time that you personally ever inspected the books or records or work papers, or any of them, of the Forster enterprises?

A. Well, it was in—preparatory to this case. I mean, it was within the last five months. I have seen certain work papers on desks of Mr. Brody or desks of accountants but I have never inspected the books and records of these companies, Mr. Griffin.

Q. Now, what was the situation then existing as you viewed it on October 27, 1950, as of the time of this conference with Mr. Taylor?

A. I felt that there was a good possibility of a conflict between Mr. Taylor, Mr. Erickson, and

(Testimony of George F. Kachlein, Jr.)

Mr. Forster, and particularly between Mr. Forster and Mr. Taylor. I did so for two things—three things that had happened. When I had my conference with Mr. Taylor on the 13th of September I mentioned to him that the thing that was concerning us primarily in the Forster matter was the inability [4997] to determine the moneys which had been put into the 198 account and that that was Forster's personal account, as I was told, and Taylor took the position then—he said, "Well, I didn't know anything about his own personal affairs, I just looked after his books and I have got a stamp that I stamped on the returns and I am protected." That is the first flag that I had of any warning that there might be something different than what my understanding up to that date was. I attributed it, frankly, at that time to a man who had been incarcerated for a period of four months and something and who had been under conditions abnormal and that he was in an upset frame of mind and, therefore, I didn't give it too much weight at the time. Afterwards I did.

Mr. Griffin: Before we take up the two and three, it is recess time.

The Court: Ladies and Gentlemen of the Jury:

We will now recess until one-forty-five. The Court calls your attention to the admonition given on similar occasions and asks that you heed it on this occasion. You may now be excused until one-forty-five.

(Testimony of George F. Kachlein, Jr.)

(Whereupon, the Jury retired from the Court room.) [4998]

The Court: You may step down.

The Witness: Thank you.

(Whereupon, the witness withdrew from the witness chair.)

(Whereupon, at 12:16 o'clock, p.m., a recess was had until 1:45 o'clock, p.m., May 6, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

Mr. Keesling: We object to the last portion of the testimony of Mr. Kachlein relative to conversation with Mr. Erickson. I move to strike all that portion for two reasons: One, it has no basis on the ground of the limited extent that this testimony is coming in—that is, to affect the credibility of Mr. Forster and——

The Court: (Interposing) I will ask Counsel if there be any objection to that.

Mr. Keesling: (Continuing) ——and that it is not proper rebuttal.

The Court: Is there any objection to striking it?

Mr. Griffin: Yes, your Honor.

The Court: You do? [4999]

Mr. Griffin: Yes.

Mr. Keesling: I refer to what the witness said and the observations of Mr. Erickson.

The Court: Well, Mr. Keesling, objection not having been made at the time, if Counsel object

(Testimony of George F. Kachlein, Jr.)
to it I don't think it should be stricken. The Court has already indicated the limits of it.

Mr. Keesling: It was in before I could object and it was in narrative style. I just want the opportunity to cross examine on it for Mr. Erickson in the event it isn't.

The Court: I assume if it stays in you are probably entitled to that.

Mr. Keesling: That is all I want.

Mr. Moriarty: The Government's position about all this matter is well known by this time.

Mr. Keesling: I think it is immaterial to begin with but I want the opportunity to meet it.

The Court: It may be that to avoid calling him back that the Court may strike it; only for that purpose but not because the objection was timely.

You may call the Jury.

If you wish to make the motion in the [5000] presence of the Jury, you may.

Mr. Keesling: I will not because I don't consider it that important.

The Court: Well, the Court will not recognize your motion and may not permit rebuttal.

Mr. Keesling: Then I will.

(Whereupon, the Jury was returned to the Court Room and the Witness resumed the witness stand.)

The Court: You may be seated. It is stipulated that the Jury and all Defendants are present in the court room?

Mr. Griffin: Yes, your Honor.

(Testimony of George F. Kachlein, Jr.)

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Q. (By Mr. Griffin): Mr. Kachlein, you related the first of three matters that disturbed you between September 13th and your meeting with Mr. Taylor on October 27th, the first going to Issaquah and your conversation with Mr. Erickson. What were the two others?

A. The second thing was that at my meeting with Mr. Taylor on September 13th of 1950, when we discussed the Forster matter, he had stated that he [5001] didn't feel like he had any concern with respect to any tax deficiencies that may be made as he kept but the ledger and, secondly, he had a stamp that he placed upon the income tax return that would give him protection simply from facts and figures given to him by the bookkeepers and by Forster in connection with income tax returns.

The third thing that disturbed me was the fact that in my conversations with Mr. Eppler and Mr. Marx, Mr. Eppler in particular had taken the position that he felt that there was a conflict of interest developing and wondered what I was going to do about it. As I recognized that the agents in their examination sometimes have information that we don't have, that disturbed me. We had discussions with respect to it culminating in my meeting with Mr. Taylor on the 27th of October.

Those are the three things that in my mind made it imperative that I take some action to alleviate the situation.

(Testimony of George F. Kachlein, Jr.)

Q. Then you did have a conference on October 27th with Mr. Taylor? A. I did, sir.

Q. And will you state to the Jury the substance of that conference? [5002]

A. The conference took place, if my memory serves me best, in the morning of the 27th. Mr. Taylor came to the office either at a—as a result of a telephone call which he gave me or I gave him. I am not sure which. And when he arrived we discussed first his trip and secondly the problem that was before us which I had stated to him in the telephone conversation, that it was essential that we meet because I felt that a conflict of interest was developing in connection between himself and Mr. Forster and it was necessary for me to straighten that matter out. I explained to him that the Government agents and our own accountants had determined that there was substantial shortage of income for a period of years, that the books and records of the company were not in good shape, as a matter of fact, they were a mess, as was expressed to me by the accountants, that in going over the various transactions further that Mr. Forster took the position that he relied on all financial matters, the keeping of the records and books, on Mr. Taylor even to the extent of hiring and firing the accounting employees, that Mr. Erickson at a meeting I had had with him a few days before indicated that there were certain changes made in the books and records which reduced [5003] income which were improper, and for that reason, as a lawyer some-

(Testimony of George F. Kachlein, Jr.)

times finds himself in the place where you have two people that you have done work for, it was essential for me to either withdraw entirely from the case or, with the consent of both parties, represent one, and that he being the first client in time he would have—if Mr. Forster approved I could represent Mr. Taylor, or, if Mr. Taylor felt that it would be better I represent Mr. Forster, with his approval I could represent Mr. Forster. I explained to him that during the four month period a number of things had occurred wherein I had taken an active part in the Forster enterprises commencing in the first part of September by being placed on the Board and being made an officer of these companies in an effort to protect the interest of the Government against money going underground, or money being dissipated that could be used for the payment of income taxes under a procedure that had been worked out between Government officials, Mr. Forster, his accountants and his attorneys. Mr. Taylor expressed the opinion that he felt that he himself was not involved in the matter, again reiterating the same position he had taken with me on the 13th, namely that he had merely kept the ledger [5004] of the companies and had reported the income from the ledger and from the information furnished by Mr. Forster, Mr. Erickson, and the other bookkeepers involved, and lastly, he had that stamp that he thought protected himself. He believed that inasmuch as I had gotten into Mr. Forster's affairs very deeply from the standpoint of the management and

(Testimony of George F. Kachlein, Jr.)

protection of the assets that I should continue on with Mr. Forster and, if possible, recommend an attorney of his, that he could select to represent him.

We did look through the telephone directory. I mentioned the names of several attorneys that I knew were working in tax work that I felt were competent and capable, one of whom was Mr. LeSourd, and another was Mr. Jones, and two or three others. We discussed the background of some of them and as a result Mr. LeSourd was selected by us both. When that selection was made I called Mr. LeSourd at his office and asked him if he was in a position to come up, that I had a matter which involved a conflict of interest and would like to see if he could represent a client of mine. About ten minutes later Mr. LeSourd came to our office. I introduced him to Mr. Taylor and told him that I had [5005] been representing Mr. Taylor for several years and that I had certain income tax matters relating to Mr. Taylor that needed handling and that in addition to that there was a conflict of interest developing between Mr. Taylor and Mr. Forster in regard to the income tax investigation of Mr. Forster. We had a general discussion, the first part of it I can't definitely recollect. The arrangement seemed to be satisfactory. Mr. Taylor expressed the fact he had heard of Mr. LeSourd and was satisfied with him and an arrangement was made whereby Mr. LeSourd would take over in behalf of Mr. Taylor and I was to turn over the files

(Testimony of George F. Kachlein, Jr.)

in connection with the income tax returns and the income tax matter we had involving Mr. Taylor. After that was said I believe they left the office.

Q. Was there anything up to that point, so far as you know, of any unfriendly feeling or attitude of Mr. Taylor toward you?

A. None whatsoever. When he left he said he was pleased with the arrangement and he was hopeful we would be able to work together in connection with that.

Q. When did you first realize that there was an actual conflict of interest? [5006]

A. Oh, the earliest I can recollect is in November or December of 1950 when further investigation of the changes in the year-end 1949 matter were gone into.

Q. Those matters referred to changes in Mr. Taylor's ledger and work sheets?

A. That is right.

Q. By Mr. Taylor? A. That is right, sir.

Q. Did you have any conference other than you testified to in connection with this matter with Mr. Eppler in August, September, or prior to this meeting of October 27th?

A. Well, I testified to the first meeting I had with Mr. Eppler, August 29, 1950, at the office of Touche, Niven, Bailey and Smart when I first met him. I had a second conference with him in the office of Mr. Stockton that same afternoon where present there was Mr. Stockton, Mr. Marx, Mr. Frank, Mr. Eppler, Mr. Forster, Alkire and Trem-

(Testimony of George F. Kachlein, Jr.)

per. That was the second conference. The next time that I either talked or met with him that I can recollect is a telephone conversation with him on the morning of September 6th when I called him in respect to a telephone call that I had had from Mr. [5007] Tremper. The next conference that I had with Mr. Eppler that I can recollect was on or about the 16th of October of that year which was a rather lengthy one. I did have one or two telephone conversations with him during the interim. One was about October 5th and the other one was either with Mr. Eppler, or Mr. Marx, on the afternoon of September 13th, or the morning of September 15th—14th, rather—September 13th or 14th. That is prior to October 27th, as I understand, Mr. Griffin.

Q. Anything in connection with that September meeting other than the statements that you have referred to that you recall of Mr. Eppler suggesting a conflict?

A. On September 6th the telephone call was in response—my telephone call to Mr. Eppler was in response to a call that I had from Mr. Tremper. Mr. Tremper called to advise that Mr. Eppler was requesting that Mr. Tremper turn over to him certain work papers of Mr. Taylor that he, Tremper——

Mr. Moriarty: May I suggest that there is no dispute about this conversation with Mr. Eppler?

The Court: The only part that has to do with conflict has any bearing. [5008]

(Testimony of George F. Kachlein, Jr.)

Mr. Moriarty: It hasn't any bearing that I can see.

Mr. LeSourd: I think it does, your Honor.

The Court: My recollection is that there was some statement regarding that.

The Witness: May I proceed, sir?

The Court: You may.

A. (Continuing) As I stated, Mr. Tremper had advised me that Mr. Eppler had requested that Mr. Tremper turn over to him certain work papers which were in the possession of Mr. Tremper at the time and Mr. Tremper asked me what he should do with respect to it. I told him that in my opinion he would be required to turn those papers over to Mr. Eppler if he was served a summons but that I would call Mr. Eppler and see if we couldn't retain them for the time being. I called Mr. Eppler and while Mr. Eppler testified he thought it was a long distance call it actually took place from my office. I called him and the conversation as related by Mr. Eppler is substantially the same as I recall, Mr. Griffin, namely that he made request for the delivery of the papers. I told him I thought that they were privileged. He stated that he thought he could get [5009] possession of them and that a foot race might develop. I told him I thought I could get them back in my office and might hold them and that a foot race might develop and eventually it wound up he did want them and my own opinion was he had the right to them if he served a sum-

(Testimony of George F. Kachlein, Jr.)

mons and I told him if he served a summons on Mr. Tremper I would call Mr. Tremper.

Q. (By Mr. Griffin): Have you confirmed your opinion that he was entitled to them?

A. No question about that, sir.

Q. Did you turn them over to Mr. LeSourd all of the documents, papers, whatever they may be—may have been—of Mr. Taylor's involving both his criminal and civil matters?

A. To the best of my ability, yes, sir.

The Clerk: Defendants' Exhibit Number A-149 marked for identification.

(Defendants' Exhibit A-149 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-149 for identification I will ask you if this is a letter of March 1, 1951, from Mr. LeSourd to you?

A. Yes, sir. [5010]

Q. Your reply of March 16, 1951, office copy?

A. Yes, sir.

Q. And Mr. LeSourd's letter to you, March 19, 1951, dealing with that matter? A. Yes, sir.

Q. The conflict having developed in which you withdrew as attorney for Mr. Taylor, did you ever make Mr. Taylor any charge for all the services rendered to him subsequent to the hearing in court in Tacoma on April 25, 1950?

A. I did not, sir.

Q. Did you serve him throughout to the best of your ability as a member of this Bar?

A. I did, sir.

(Testimony of George F. Kachlein, Jr.)

Mr. Griffin: I offer in evidence A-149.

Mr. LeSourd: No objection.

Mr. Moriarty: A continuing objection.

The Court: There being no objection from Mr. Taylor's counsel, the exhibit will be admitted as similar exhibits have been admitted today. Members of the Jury: the same limitation.

(Defendants' Exhibit A-149 admitted in evidence.)

Q. (By Mr. Griffin): The first is a letter, March 1, 1951, on [5011] the letterhead of Little, LeSourd, Palmer and Scott, to Mr. Kachlein, "Re: L. Hicks Taylor."

"Dear George:

"Mr. Taylor has asked me to get from you his entire file, including all material relating to his tax matters, both criminal and civil, and those of his wife, and all personal papers of himself and wife, including wills. If you desire a letter in writing from him, I will be pleased to get the same.

"Also, we should have the withdrawal of yourself and Charlie Osborn * * * "

That is an associate?

A. A partner of mine.

Q. " * * * under the powers of attorney heretofore executed by Mr. and Mrs. Taylor. We talked about that matter before, and I am not sure but what you have already sent such a withdrawal in. If so, please ignore this request."

In representing a taxpayer before the Internal

(Testimony of George F. Kachlein, Jr.)

Revenue Bureau you have to have a particular power of attorney, do you not?

A. That is correct.

Q. Or they won't recognize the lawyer?

A. That is right.

Q. "Further, we should have your withdrawal as attorney [5012] in the cases involving Mrs. Taylor which I am informed are pending in the Tax Court. I assume that the copies of the Tax Court petition and other documents will be among the papers that you will send to me.

"Very truly yours,"

Signed, "Fran"; underneath, "F. A. LeSourd."

Second, March 16, 1951, Mr. Kachlein's letter addressed: "Dear Fran"; and itemizing the enclosures being sent to Fran.

And the last letter, March 19, 1951, addressed "Dear George"; again signed "Fran," acknowledging receipt of the documents.

And as of that time, 1951, did you ever hear any claim made or asserted as has been in this court room by Mr. Taylor or his counsel?

A. No, sir.

Q. And at any time did either Mr. LeSourd or Mr. Cox or anyone from that firm confer with you to ascertain what the facts of your employment were and the manner of your withdrawal of representing Mr. Taylor? A. No, sir.

Q. Just the charge made here in this court room? A. Yes, sir. [5013]

Mr. Griffin: You may inquire.

(Testimony of George F. Kachlein, Jr.)

Mr. Moriarty: At this time the Government moves to strike the testimony of Mr. Kachlein as immaterial and irrelevant and under the position that the Government has taken we indulge in no cross examination.

The Court: Motion denied.

Mr. Keesling, do you have something?

Mr. Keesling: I may want to cross-examine after Mr. LeSourd.

The Court: I am inclined to think in the interest of saving time, there being some indication by Mr. Keesling in the absence of the Jury, that certain portions of Mr. Kachlein's testimony relating to Mr. Erickson are not material to the matter now before the Jury, if it remains the Court would feel that Mr. Erickson is entitled to rebuttal to meet that. Therefore, the Court for that reason believes that that portion of the testimony of Mr. Kachlein wherein he related his conversation and discussion with Mr. Erickson should be stricken and disregarded completely. It would have no relation otherwise, as I understand it.

You may proceed. That will eliminate cross examination or rebuttal on that. [5014]

Mr. Griffin: Exception.

The Court: The exception may show.

Mr. LeSourd: What order does the Government want the cross examination?

The Court: The Government, in view of their position, waives cross examination.

Mr. Moriarty: No interest in the controversy.

(Testimony of George F. Kachlein, Jr.)

Mr. LeSourd: Very well. [5015]

Cross Examination

Q. (By Mr. LeSourd): Mr. Kachlein, you mentioned in your examination that Mr. Taylor had bought some clients into your office in the years before he got into trouble who had some controversy with the Bureau over family partnerships?

A. Yes, sir.

Q. These family partnership cases involved legal questions as to the validity of these partnerships, did they?

The Court: May I interrupt a moment, Mr. LeSourd?

Mr. LeSourd: Yes, sir.

The Court: I think my striking of that testimony is quite broad. I don't mean to strike, Members of the Jury, the testimony relating to the fact that Mr. Kachlein went out to see Mr. Erickson and of his books. I strike only the conversation.

Mr. Keesling: I think there was one other matter. He made some observations about the conversations.

The Court: Well, any observation or conclusion he may have made as to Mr. Erickson or [5016] state of mind, I won't strike that.

Mr. Griffin: I was under the impression that what your Honor meant to strike was Mr. Kachlein's observation of what Mr. Erickson told him.

The Court: Yes.

Mr. Keesling: That is what I am referring to, his observations on the conversations.

(Testimony of George F. Kachlein, Jr.)

The Court: Yes.

Mr. Keesling: Not that he had a conversation. I have no objection to that.

The Court: I believe it is clear. I am sorry, Mr. LeSourd.

Mr. LeSourd: That is all right.

Q. (By Mr. LeSourd continuing): Mr. Kachlein, the problems involved in these family partnerships were problems of the status of the partnerships for tax purposes?

A. The first case was, Mr. LeSourd. The second case had family partnership status together with other matters.

Q. It had some depreciation matter in addition?

A. Depreciation and business expense as against personal expense. [5017]

Q. And these family partnership matters, the courts were in some confusion at that time as to the applicable rules, were they? A. Yes, sir.

Q. And that was finally determined by a Supreme Court decision? A. Yes, sir.

Q. Now, is it your testimony that not until November, I believe you said, of 1950 did you realize there was a conflict in your representation of Mr. Forster and Mr. Taylor?

A. That isn't quite it. I stated that I realized that there was this conflict—it looked to be a conflict—when I met with Mr. Taylor on the 27th, sir.

Q. Is it your testimony that you had no realization of a conflict prior to that time?

(Testimony of George F. Kachlein, Jr.)

A. There was a possibility of a conflict prior to that time, yes.

Q. When did you first realize the possibility of a conflict?

A. In October, about the 23rd or 24th, sir.

Q. When you went out to Issaquah?

A. Yes, sir.

Q. And that was the very first time? [5018]

A. Yes, sir.

Q. (Continuing) That you realized the possibility of conflict?

A. Well, now, possibility of a conflict existed from the very first time that an Internal Revenue Agent walked in to Mr. Forster's business. I mean, there could be a conflict of interest, and insofar as this case is concerned—I mean Mr. Taylor and Mr. Forster—the possibility of conflict did not exist in my mind until the meeting that I had with him on September 13th, wherein he had made the statement that he was not worried with respect to his own self as he kept the records as to the ledger accounts and that he did not go further than that. That was the first time that there was the possibility of a conflict in my mind resulting. I felt that was the result of a man who had been incarcerated for a period of time coming back upset and having been interviewed, or attempted to be interviewed, by the Government agents. He was mentally disturbed about it, Mr. LeSourd, and it disturbed me, too.

Q. Did you ever state, Mr. Kachlein, to anyone prior to October 27, 1950, when you severed your

(Testimony of George F. Kachlein, Jr.)

relations with Mr. Taylor that Mr. Taylor or his accounting was responsible for Mr. Forster's tax position, [5019] or words to that effect?

A. I think I did, sir.

Q. Will you tell us when and to whom?

A. I think on the 26th of October I had rather a lengthy conference with Mr. Eppler and Mr. Marx. It lasted, approximately, oh, I would say, three hours. It involved many matters in connection with the Forster investigation. First, if—may I relate the full conference?

Q. Go right ahead, sir.

A. First they were concerned over the fact that the information which they had requested from the accounting firm they were not——

Q. (Interposing) Just a moment. I am simply asking whether you made such a statement and when, and what the statement was.

A. During the period of the conversation the question arose as to could I explain how such a substantial deficiency had resulted? I said I thought that it was due to the faulty, sloppy, poor accounting of Mr. Taylor.

Q. Now, was this the first time you had made such a statement?

A. As far as sloppy accounting?

Q. A statement as far as sloppy accounting of Mr. [5020] Taylor in connection with Mr. Forster's tax trouble?

A. I may have made it earlier than that, sir.

(Testimony of George F. Kachlein, Jr.)

Q. Can you tell us when you may have made it? When you did make it earlier than that?

A. I think one of the questions was asked, either myself or Mr. Forster, at a meeting with Mr. Frank, Mr. Stockton, on August 29th when——

Q. And you made such a statement then?

A. Yes.

Q. Did you make such a statement earlier that day also? A. I don't recall, Mr. LeSourd.

Q. Did you—did it not make you believe there was a conflict in your representation of these two parties when you made such a statement?

A. No, I didn't think so because sloppy bookkeeping didn't mean fraudulent actions.

Q. Is it customary for an attorney to blame another person's tax troubles on his clients' bookkeeping, or any other action?

Mr. Griffin: If a fact.

A. Will you repeat the question?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

The Court: Is that material to this matter?

Mr. LeSourd: I believe it is, your Honor.

The Court: The custom?

Mr. Griffin: The question entirely general. I will object to it. I didn't want to. The question is improper as to custom. What is the fact?

The Court: Sustain the objection as to custom.

Q. (By Mr. LeSourd continuing): Well, is it your practice to do that, Mr. Kachlein?

(Testimony of George F. Kachlein, Jr.)

A. No. These were rather peculiar circumstances, Mr. LeSourd. Here you had Mr. Marx who had worked on the Taylor case being the same agent that was working on the Forster case. You had him also working on another case involving a client of Mr. Taylor's. You had certain facts which, where you deal with a person, become apparent. You had facts which both of us had knowledge of which clearly showed that his type of accounting was sloppy, was not carefully done. Both of us knew it. So that our [5022] comments were like two peoples working alongside one another. It wasn't done with any idea of harming Mr. Taylor. It was the fact.

Q. Now, in the meeting of April 26, 1950, with Mr. Marx, did you make a similiar statement with respect to Mr. Forster's problem, that they were undoubtedly due to Mr. Taylor's sloppy accounting, or words to that effect?

A. No, because I didn't know what condition Mr. Taylor's—Mr. Forster's—books were in.

Q. You heard Mr. Marx's testimony to that effect?

A. I heard Mr. Marx's testimony to that and his testimony wasn't that, sir.

Q. Now, correct me if I am wrong. I recollect his statement to be that you said that if there were any errors or anything wrong with Mr. Forster's return that it was undoubtedly due to Mr. Taylor's sloppy accounting. Am I in error in that recollection?

(Testimony of George F. Kachlein, Jr.)

A. I think that recollection is quite correct. That is different from the first statement, though.

Q. I am sorry. I didn't realize it was. Did you say that Mr. Marx's statement of your conversation is incorrect? [5023]

A. I don't recollect saying that. I have no reason to doubt Mr. Marx's statements, however. As, again I say, both Mr. Marx and I had worked on Mr. Taylor's case. We had discussed Mr. Taylor's case that morning because it was fresh in everybody's mind and I might have said that, sir.

Q. Mr. Marx said you stated it in connection with Mr. Forster's case. Do you say you don't recollect? A. I do not.

Q. Would you deny that you made that statement?

A. I have no recollection of it. I could have made it and I could not have made it, sir. I don't know.

Q. Wouldn't that statement call to your mind the fact that there was a conflict in the representation of these two men?

A. I didn't make the statement to the best of my recollection, sir.

Q. But you don't deny that you did?

A. No, I don't deny it because I have no recollection of it, Mr. LeSourd.

Q. Did you make any memorandum of that conversation? [5024]

A. No, I made no memorandum of that conversation. The memorandum was made by Mr.

(Testimony of George F. Kachlein, Jr.)

Tremper and a copy of the memorandum was furnished Mr. Marx.

Q. Mr. Marx did make a memorandum?

A. The first time I knew that he made a memorandum was when I heard of it in this court room, sir.

Q. Yes.

A. And that memorandum was not made in my presence or at that meeting.

Q. Now, you went on after that all through the summer and fall handling various legal matters for the Taylors? A. I did, sir.

Q. And when was the first time that you felt that there was a possibility of a prosecution in this case or a charge of fraud?

Mr. Griffin: That is a double question.

Mr. LeSourd: I will change it.

Q. (By Mr. LeSourd continuing): When did you realize there was a possibility of a fraud charge in this case?

A. The day that the—that Mr. Eppler came into the case, which was August 29, 1950. There was [5025] a possibility but not a probability.

Q. I am talking about a possibility. Not prior to that time? A. No, sir.

Q. The conference in April—the 26th—1950. Mr. Marx informed Mr. Forster of his Constitutional rights, didn't he? A. Yes, sir, he did.

Q. That is asked only where there is a possibility of fraud, isn't it?

A. Not necessarily, Mr. LeSourd. There was no

(Testimony of George F. Kachlein, Jr.)
discussion at that meeting whatsoever of any possible fraud charges. As a matter of fact, the statement was made by Mr. Marx that inasmuch as Mr. Taylor had pled guilty to fraud in his own return they were making an examination of his major accounts, and this was one in which we were asked to make a preliminary survey. That is, "we", referring to the accountants to do that, and asked us to make checks to see if there was anything wrong. Now certainly that didn't infer criminal prosecution or the possibility of it in my mind, sir.

Q. During the summer you got advice from Touche-Niven of increasing amounts of deficiencies I think you said. [5026]

A. That is right, sir.

Q. And that raised no question in your mind at that time?

A. Well, it didn't because the way the advice was given indicated that the facts as I understood them to be then were that the books were in a mess, that there seemed to be no consistencies between the companies, that the records were of such shape that they were not of too great a value to the accountants in determining the income or the loss or the net worth of the company, or companies, and the accountants would not make any statements to me as to any specific things that were going along until actually they checked them out but I was told that first of all there might be two hundred thousand dollars unstated, three hundred, four hundred, five hundred, until it got up to a rather substantial

(Testimony of George F. Kachlein, Jr.)

amount that showed, possibly, tax liability of four hundred to five hundred thousand dollars in about the tenth or twelfth of August, 1950. At that time I discussed the matter with Mr. Forster to see whether or not we could—he was in a position to raise sufficient funds with which to pay that tax liability; even went to his bankers to see what type of a loan could be made. [5027]

Q. You knew at that time there was a serious problem presented, didn't you?

A. Of civil liabilities, yes, sir.

Q. Now, I believe you testified that about the 18th of August you had a call from Mr. Forster?

A. That is right, sir.

Q. Concerning Jack Taylor's petition for Hicks Taylor?

A. It wasn't quite that. I said several matters including the request of Jack Taylor.

Q. I see; and you made an appointment to see Mrs. Taylor?

A. That isn't correct, sir. I stated Mrs. Taylor called me to discuss with her the matter in connection with drafting a will for her and I made an appointment to go to her home.

Q. Isn't it a fact you called her after receiving Mr. Forster's call and made an appointment?

A. That isn't correct, sir. She called me, Mr. LeSourd.

Q. In any event, you went out to her home?

A. I did, sir.

Q. What was so important about Jack's peti-

(Testimony of George F. Kachlein, Jr.)

tion, or the will, to cause you to go out to her home [5028] rather than have her come in?

A. I was going to the beach for the week-end. It was Friday. I live on Whidby Island. It was on my way out that I dropped in to see her.

Q. Is it your practice to drop in to see clients that you are making wills out for, or do you have them come to your office?

A. I do both ways, Mr. LeSourd.

Q. There was no urgency about this will, was there? A. No, there was none.

Q. Now, did you tell Mrs. Taylor that Jack's petition was not in accordance with your plans?

A. Not in accordance with the plans we had worked out with Mr. Connor who was secretary of the Washington State Accountancy Board.

Q. Now that was, you say, the plan that you were referring to in talking to her? A. Yes, sir.

Q. And what in that would make it inadvisable for Mr. Taylor's clients to express their confidence in him?

A. There was nothing that is wrong in them expressing their confidence in him but I thought he was attempting to get back, in advance of the hearing, [5029] Mr. Taylor's L.P.A. Certificate when we had arranged with them that upon his release we would have a hearing and the full matter would be aired. You see, Mr. Taylor—Jack Taylor—did not contact me, did not discuss it at all, to my best recollection, sir.

Q. And you didn't call him?

(Testimony of George F. Kachlein, Jr.)

A. No, I didn't. I didn't know him. The first time I ever saw him was in court here.

Q. And how would it have prejudiced Mr. Taylor before the Accountancy Board if he had petitions from his clients expressing confidence in him?

A. I thought I was representing Mr. Taylor and I thought if anything was to be done in connection with him L.P.A. License it should come through me.

Q. And you were representing Mr. Forster also?

A. That is correct, sir.

Q. Now, did you know that Mr. Taylor was returning in a few weeks to Seattle?

A. Yes, I knew he was going to return in September because Mrs. Taylor and I discussed it.

Q. Why didn't you have Jack keep the petitions and simply hold them for this hearing?

A. I felt as Mr. Taylor was coming back in a few weeks it was better for him to sit down and work [5030] out the program. Getting back his license was going to be difficult in my opinion.

Q. No doubt, and having expressions of confidence from his clients would have helped, wouldn't it? A. No question about it; right, sir.

Q. Now, on August 29th when you say that you stated to the Internal Revenue people that Mr. Forster's deficiencies were due to Mr. Taylor's sloppy accounting—am I stating that correctly, Mr. Kachlein?

A. Well, I think to put it more correctly, Mr. LeSourd, when the question was asked what caused

(Testimony of George F. Kachlein, Jr.)

these things the answer that was given, I believe, to the best of my recollection, was that the financial affairs, the books, the records and the looking after the financial affairs were Mr. Taylor's responsibility and if there were errors in connection with them it was something that he was responsible for.

Q. And you made that statement in behalf of Mr. Forster as a defense for him?

A. I believe I did, yes, sir.

Q. If you made a similar statement April 26th it would be for the same purpose? [5031]

A. No, because I didn't know anything was wrong with the books on April 26th.

Q. Now, on September 6th you instructed Touche-Niven to deliver these papers, did you?

A. No, I told them that they could deliver the papers if a summons was served upon them.

Q. And you did raise the question of privilege?

A. I did, sir, yes.

Q. If they were privileged they couldn't have secured them by summons, could they; if they were privileged and in your hands?

A. Well, that one is assuming something, because they would not have been privileged even in my hands, Mr. LeSourd, as the Courts have held.

Q. Well, at the time, however, you expressed the statement to Mr. Eppler, didn't you, that they were privileged? A. That is right, sir.

Q. But still you permitted them to be surrendered?

(Testimony of George F. Kachlein, Jr.)

A. Because they were not privileged, in my opinion.

Q. And did you do that as a part of your co-operation for Mr. Forster on behalf of the Government? [5032]

A. No. They were papers I had never seen. I didn't know anything about them. I got a call at 9:00 in the morning from Mr. Tremper stating that the Government desired to have the papers, what should they do, they were Hicks Taylor's work papers. I said, "I don't think we can hold them back.", and he said, "They aren't very helpful as far as we can see." I said, "I will try and hold them until Mr. Taylor gets back," or words to that effect, and when I called Mr. Eppler I tried to retain them to the best of my ability, knowing that legally he could get them.

Q. You didn't consult with Mr. Taylor about releasing those?

A. No, sir, I did not. I was exercising my best judgment on the matter, sir.

Q. Now, the defense that you expressed for Mr. Forster at the August 29th meeting is the same defense that you followed throughout this case for him, isn't it?

A. Yes, I would say so, if you are talking about defense of his actions.

Q. I am talking about defense of Mr. Forster in this case. A. Yes, sir. [5033]

Q. Now, on September 13th when Mr. and Mrs.

(Testimony of George F. Kachlein, Jr.)

Taylor came to your office, did you advise Mr. Taylor of any conflict?

A. No, sir, because I didn't think there was a conflict.

Q. You did not think there was a conflict?

A. No, sir.

Q. It was Mr. Eppler who raised the question with you as to a conflict?

A. I believe it was, sir.

Q. He could see the conflict and you couldn't?

A. Well, that isn't quite true, Mr. LeSourd. From the very start of the investigation I think that Mr. Eppler took the position—at least I got the inference in dealing with him—that he was attempting to split the three parties and he was trying to drive a wedge to the best of his ability and one of the ways to drive a wedge is to try and create a conflict and that is the impression I had in working with him in the conferences I had with him, sir.

Q. And you were not trying to let any wedge develop? A. That is correct, sir.

Q. In stating to the Government that Taylor's troubles—Mr. Forster's troubles—were due to Mr. [5034] Taylor's account was not driving a wedge?

A. Was due to his sloppy accounting, sir, his negligence in accounting; not anything intentional or wilful on his part.

Q. Did you advise Mr. Taylor on September 13th or at any time before or afterwards that you were making such statements to the Internal Revenue people?

(Testimony of George F. Kachlein, Jr.)

A. On September 13th I did not.

Q. Did you advise him that at any other time?

A. On September 27th I stated to him that Mr. Forster had taken the position that he, Mr. Taylor, was in charge of the books and that any errors or shortages of income were due to his bookkeeping.

Mr. Griffin: Excuse me. You said September.

The Witness: I mean October 27th. I am sorry.

Q. (By Mr. LeSourd): Did Mr. Forster take that position on your advice?

A. No, sir, he took it on his advice of his own. I mean his own actions, sir.

Q. His own actions. Now, didn't you sometime prior to October 12th advise Mr. Eppler that you [5035] could not longer represent Mr. Taylor?

A. No, sir, I did not. I had a conversation with him by telephone on October 5th but that was not my statement to him.

Q. Did you advise him that you had a conflict of interest?

A. No, sir; I said if there was a conflict of interest then, of course, I would have to remove myself from the case or handle only for one client or take some action with respect to it. It was not until the 26th of October, to the best of my recollection, Mr. LeSourd, that I stated that I believed a conflict developed and I would have to take some action in order to straighten the matter up and I believe Mr. Marx was there at the time.

Mr. LeSourd: May I suggest a recess at this time, your Honor?

(Testimony of George F. Kachlein, Jr.)

The Court: All right. Ladies and Gentlemen of the Jury: We will now take the mid-afternoon recess. The Court calls your attention to the admonition given on similar occasions and asks that you heed it on this occasion. You may now be excused.

(Whereupon, the jury retired from the court room.) [5036]

(Whereupon, at 1:43 o'clock, p.m., a recess was had until 2:59 o'clock, p.m., May 6, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the court room?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor, so stipulated.

The Court: You may proceed, Mr. LeSourd.

Mr. LeSourd: Thank you, your Honor.

Q. (By Mr. LeSourd): Mr. Kachlein, at the August 29th meeting, two meetings——

A. (Interposing) Yes, sir.

Q. (Continuing) ——with the Internal Revenue people, did you appear at those meetings as Mr. Forster's attorney? A. Yes, I did, sir. [5037]

Q. Did you appear as Mr. Taylor's attorney?

A. Not of record, sir, no. I had no power of at-

(Testimony of George F. Kachlein, Jr.)

torney from him covering that year, sir, or those years where Mr. Forster was involved.

Q. Did you tell these people at that meeting that you were representing Mr. Taylor?

A. I don't recall of having done so, Mr. LeSourd.

Q. You made these statements as Mr. Forster's attorney?

A. I made statements as Mr. Forster's attorney. Mr. Marx was present at the meeting. Mr. Marx and I had sat through a number of matters involving Mr. Taylor. He knew that I was Mr. Taylor's attorney.

Q. Now, when you went out to see Mrs. Taylor with regard to Jack's petition are you certain that you talked about a will at that time?

A. I am quite sure of it, sir, because that was on the 18th and on the 20th or 21st, 22nd, I drafted a will and I think on the 25th the will was executed. I don't have it in my files. I turned them over to you. The copies and original to Mrs. Taylor, but my recollection is that Mrs. Taylor called me. I am sure of that part. [5038]

Q. You are sure she called you?

A. Yes, sir, because it shows on our own telephone call sheets in the office.

Q. She came in to the office, did she, with regard to that will?

A. She came in later with regard to the will.

Q. She came in with regard to the will later?

A. Yes, sir.

Q. And gave you the information for it?

(Testimony of George F. Kachlein, Jr.)

A. No; gave me the information, the original information, at her home. There were a couple of items she wasn't certain as to what she wanted to do with. She called me, I think, on the 21st or 22nd, Mr. LeSourd, and I made a draft of the will and I redrafted the will on the 25th and I think the will was executed on that date. That is the best of my recollection, sir.

Mr. LeSourd: That is all, your Honor.

The Court: Any redirect?

Redirect Examination

Q. (By Mr. Griffin): Mr. Kachlein, is the defense of Hans Forster in this case based on the cold facts as you understand them?

A. To the very best of my knowledge and belief, [5039] sir.

Mr. Griffin: That is all.

The Court: That is all, Mr. Kachlein.

The Witness: Thank you, sir.

(Witness excused.)

* * * * * [5040]

Mr. Griffin: Yes, your Honor.

At this time, the Government having rested and all the evidence being in, the Defendant Hans Forsters renews the motion heretofore made at the close of the Government's case for a verdict of acquittal, upon [5057] the grounds and for the reason at that time more specifically stated, and which grounds have now become evident by the evidence

adduced that only a judgment of acquittal can be entered in this case.

The Court: The motion will be denied.

Mr. LeSourd: If your Honor please, at this time, all of the evidence having been in, the Defendant Taylor renews his motion for a directed verdict of acquittal made at the close of the Government's case on the ground that the evidence—all of the evidence now having been in, the evidence remains insufficient to support a verdict of guilty against this defendant.

The Court: The motion will be denied.

Mr. LeSourd: Also, at this time, your Honor, the Defendant Taylor renews the motions for mistrial made during the course of the trial, and renews the motion for severance made prior to the trial.

The Court: The motions will be denied.

Mr. LeSourd: May the record on this be held open, your Honor? We may have some miscellaneous motions to make.

Mr. Cox: Motions to strike.

The Court: If you are going to get exhibits in, you are a little premature, but I will consider them as made without prejudice to the exhibits. [5058]

Mr. LeSourd: Yes. We may have some motions afterwards.

Mr. Moriarty: Your Honor is barring further testimony, though?

The Court: Apparently we will not have any further testimony unless there is some very cogent reason.

Mr. Keesling: At this time, the Defendant Erickson renews his motion for judgment of acquittal, and challenges the sufficiency of the evidence as to him, and as to all counts generally and as to each count separately for the reasons that we stated in our original motion at the close of the Government's case and at the close of the case put on by Mr. Taylor.

The Court: The motion will be denied. * * * * *

Mr. LeSourd: Distinguished Counsel, and Ladies and Gentlemen of the Jury:

This has indeed been a long and difficult case. On behalf of Mr. Taylor and on behalf of Mr. Cox and myself as his attorneys, we wish at the outset to thank you for your patience and your consideration throughout these many months. We realize it has been a real sacrifice to you, and we want you to know that we appreciate your consciousness and your sacrifice in carrying on your part in the process of our Government whereby we seek to give Justice to high and low, to the fortunate and unfortunate, alike.

Now, oftentimes, Ladies and Gentlemen, the process of arriving at Justice and of correct decisions is impeded by the very volume of the material and the testimony and exhibits that are offered before a Court and Jury in a case of this sort.

We feel that it may be that this is true in the case at bar. We have throughout this case [5229] attempted as best we could to limit the testimony and the material to those matters that were directly involved with the charges that the Government

brought. We have made a very large number of objections in this case, and I might say that it is not my practice usually to do that, but we have done so in order to attempt to keep the real issues of the case from getting buried under a fog, under the great, voluminous mass of immaterial matters, and we trust that you, as Jurors, will realize that in making all of those objections, that we were endevoring to do this and endeavoring actually to bring out to you what the real issues in the case are.

Now, what is the essential thing that you as Jurors are to find in this case?

Three defendants are here charged with income tax evasion. The evasion that is charged is on Mr. Forster's individual returns between 1945 and 1949, and on the corporation returns of the Issaquah Creamery from 1946 to 1949.

Your task is to decide as to each defendant separately and as to each year separately, and as to each tax-paying entity separately. Your task is to decide separately whether each one of these defendants, whether that person himself wilfully [5230] intended to evade tax, knowing that there were taxes legally due and owing, that there was income which was required to have been in that return and which was not in any item of that return.

Not that a person should have known, not that he might have known, not that he could have known, but that he knew when that return was filed that there was income which had to be reported which was not in any item of that return, and I believe,

as the Court will instruct you, it is wilful when it is done with bad faith and evil motive and your task, then, Ladies and Gentlemen of the Jury, is to determine whether as to each of these Defendants individually he acted with bad faith and evil motive, knowing that there was income not included in those returns that should have been included.

Then your task really is, Ladies and Gentlemen, to determine the state of mind. Now, in determining a state of mind, the first thing that we, as practical human beings do, is to look at the surrounding circumstances, to see what sort of a state of mind the conditions that exist, would naturally produce in a person under those same set of circumstances in the light of our ordinary human experience.

Now, we all realize, with the frailty of [5231] human nature, what it is, that people will at times attempt to better themselves financially by cheating others, by cheating the Government on their taxes or by other improper conduct, and when we find that such improper conduct has occurred, and that it has resulted exclusively in financial benefit to a particular person, we immediately know that that person may have a motive—he could have a state of mind—for committing these acts.

We also know from our experience that the ordinary person desires to lead a lawabiding life, and does not usually cheat or defraud others, or his Government when there is no real benefit to him from so doing, and so our experience would lead us to believe that where there is no benefit found to a person, it is not likely that that person will have

a state of mind, a motive, intentionally and wilfully to cheat and defraud the Government, or anyone else.

Now, when we get down to this case, and to consider particularly the defendant Taylor, as to whom it is my province in this case to speak, we start out then in the case not only with a presumption of innocence, which the Court will instruct you attaches to him throughout this case, but also with the fact that he had no incentive as found in the usual human [5232] experience to have knowingly and with an evil motive to participate in a tax evasion scheme to save Mr. Forster taxes. The evidence in the case has substantiated what I told you in my opening statement—that Mr. Taylor's total compensation, his total income, from all of Mr. Forster's enterprises, averaged approximately fifty dollars a month, taking them all, even those where Mr. Forster had a minority interest.

The total amount that Mr. Taylor received ran from about $3,000 in the early years of this Indictment to a maximum of five thousand dollars for the last year of the Indictment.

Now, I do not need to go over with you in detail the extensive services that Mr. Taylor performed for this. Mr. Griffin said something about one day a month for three of the companies. That is silly. Item after item, detail after detaail, on this stand, you learned that Mr. Taylor was practically on call for a myriad—a myriad of services, day to day, week to week, month to month, year to year, that had nothing whatsoever to do with the ordinary

month-end and year-end profit statements that he got out for these businesses.

Mr. Taylor performed a myriad of services, and, as I say, there is no need of my taking your time [5233] to go over them because you heard them.

Arctic Gardens he maintained what, for all practical purposes, was the offices of the company, doing practically all the details of running the day-to-day work of that business, a job that would ordinarily pay three or four or five hundred dollars a month. And what did he get? He got fifty dollars a month.

You will recall Mr.—the testimony of Mr. Tremper, I believe, that his time was charted at the rate of $150 a day, and Mr. Gorans' time was $60 a day. They are certified public accountants. Licensed public accountants don't get as high compensation as certified public accountants, but it is obvious that what Mr. Taylor received during this period was ordinary pay for the actual hours he put in working on this business, and all these businesses.

As Mr. Taylor testified, and Mr. Griffin referred to it in his argument, he testified that taking all of these businesses as a whole and averaging it out, on Arctic Gardens he was getting far less than the time he was putting in, and on certain ones like Apex, he was getting good pay for the time put in, but averaging it out, he felt that the compensation was low but it was adequate for what he was doing, but it [5234] would not justify, Ladies and Gentlemen, further extensive service. It would not justify audits and detailed verification that would take day after day of work, seventy thousand dollars for

audits that the defendant Forster says that he paid.

Now, where a man is receiving only ordinary pay for the actual hours he is working, there is certainly no incentive, financially at least, no motive shown, that would furnish any reason for Mr. Taylor knowingly and wilfully to participate in a large-scale tax evasion such as shown in this case.

You may be sure that if Mr. Taylor had received any financial remuneration above that, it would have been shown here. In fact, Mr. Forster's defense made a great thing of seventeen cents that Mr. Taylor had received, at one time, and another time they made a great to-do about $64.67 that he had received in closing out his Arctic Gardens account, and we showed you that right on the very book of the company that was credited to his $50 a month fee and there it was on the books when Mr. Gorans must have seen it when he tabulated the fees that Mr. Taylor received. Yet, they would try and have you believe that here was something that Mr. Taylor was taking for himself; and there was none of that, and if there [5235] was, you can be sure it would have been shown in this case.

Mr. Forster's position in this case was that Taylor could have paid himself anything that he wanted. Well, the evidence is to the contrary, but let's assume for a moment, that this were true; if any man were a knowing participant in such a large-scale tax evasion as shown here, particularly if he were the master mind, as Mr. Moriarty would like to tell you, if he were the designer and planner of that evasion, and if he could take whatever money he

wanted to out of it, he would take far more than mere minimum pay for the hours he actually worked in this business.

But, actually, Mr. Forster's contention is patently not true. Mr. Forster himself testified that no one made any salary raises in his business without getting his own personal consent.

He testified that he retained to himself the decision as to all substantial increases in expenditures. When he learned that Mr. Simonson had gotten $100 a month more, he immediately calls him and takes him to task.

Schneider testified that Forster swore when he found that Schneider had paid Taylor an extra [5236] $600 for a year in which Taylor had performed a large amount of extra services, because Mr. Baskett had passed away, and Taylor then started signing checks and it was necessary for him to go to Renton twice a week for him to sign checks of the business.

The swearing we don't believe actually happened, because it is obvious that no one connected with Forster, whether Mr. Taylor, Schneider or anyone else, would have dared receive any extra salary without clearing it in advance with Mr. Forster, and Mr. Schneider was the president and general manager and one-third stockholder of this company, and he was the one who signed the check to Mr. Taylor for that $600, and it is inferrable, I think, from the evidence, that he even checked that with Forster before it was ever paid to Mr. Taylor.

Forster admitted on cross-examination that he

even paid a bonus to Ribary in cash, one purpose being to avoid other employes learning of it and asking for it themselves. The reason Mr. Forster would like you to believe that Taylor could pay himself anything he wanted is that he wants you to think that he had an understanding with Taylor that Taylor should make complete audits of the books and pay himself whatever that might cost. If Mr. Taylor had thought [5237] that he could get additional compensation for additional services to Forster, if he had an understanding that he could pay himself whatever he liked, and was to make audits of the books, he certainly would not have continued to receive $50 a month from Issaquah Creamery without variation over a period from—and $50 a month from Alpine—$100 from the two of them without any change from 1935 to 1950 during which time these companies went from very small companies to large operations with a total of five or six million dollars a year sales and substantial profits.

Human nature just isn't that way, and certainly it is not believable that there is any understanding that Mr. Taylor could pay himself anything that he wanted, and he was to make complete checks and audits of these books, no matter how much it cost under these circumstances. Moreover, the facts in evidence negative any such conclusion.

Taylor testified that in 1940 when the businesses were split, he asked for additional compensation, and the outcome was, it was agreed that his com-

pensation would stay the same, and that Erickson would do more work.

Forster does not deny there was a conversation [5238] about fees at the time, and again in 1944 when Daisy Ice Cream was purchased by Forster, Taylor had been the accountant for Daisy Ice Cream, and was getting paid for handling the accounting for that operation.

After Forster acquired it, Taylor's compensation ceased. This fact is admitted.

Taylor testified that he asked Forster whether he should continue to act as accountant for the business, and Forster said, "No, Erickson will handle it out at Issaquah."

Mr. Forster denies this conversation, but the facts refute him. Taylor's compensation did cease, and Erickson from that time on did handle the accounting out at Issaquah, and made up the financial statements from year to year for this business.

Now, with regard to this matter of audit, Forster certainly knew that Taylor was not auditing the books or verifying the details.

Back in 1932 there was an audit. Mr. Taylor was asked by Mr. Peters and Mr. Forster to make a special audit, and he did so, and it is here in evidence. Mr. Griffin has referred to it. It was an audit. It had a detailed letter of verification, signed by Mr. Taylor, showing what work he had done and what assets he had verified, and verified that [5239] subject to those conditions that the statement was correct. There is not one single other such verified statement in this entire record. Only that time was

Taylor ever asked to make an audit, or verify the details of the business. Forster received that audit. He knows what an audit is. He knew year after year in that time that he was getting no audit or certification, or verification, of any kind, but merely a list of assets and liabilities made up from the information given Mr. Taylor without verification.

Now, perhaps Mr. Forster had another purpose besides that of saving money in not having his Issaquah books audited in the year in question, by Mr. Taylor or anyone else; he had kept control at Issaquah of the disbursements of Alpine Dairy as well as of Issaquah Creamery, and Mr. Forster had also arranged that there should come into Issaquah a large number of receipts from these various businesses that he had an interest in that were scattered over Western Washington, including Apex and Finstad and Utgard, and these other businesses.

Mr. Griffin stated that Mr. Taylor arranged that, that Taylor had these Apex checks sent in to Issaquah, but you will recall Mr. Erickson's own testimony [5240] on the stand that when he was claiming that the reason he had no place in the books for the Apex checks was that they didn't really belong to Issaquah but to Alpine, and he was asked why didn't call Mr. Keck and ask him to change them.

What did Mr. Erickson say?

Forster arranged for the checks to come in here and it was Hans's business. Why should I interfere? Certainly Forster arranged it. He was conducting the details of the business, and he had all the

checks of Alpine, or whoever they belonged to, coming in to Issaquah.

Now, it is significant, Ladies and Gentlemen, in this case, that all of this diversion of income which the Government claims here and which is the real basis of this case, all occurred out at Issaquah.

The Government is not here complaining of any matter arising out of the Seattle office of Alpine Dairy. In the fog that has been attempted to be created, Mr. Griffin goes over a lot of accounting adjustments which Mr. Gorans says were made in the ledger arising out of the Seattle office of Alpine Dairy. Mr. Gorans admitted that the adjustments may be correct. He didn't know that there was anything [5241] improper about them. He just couldn't explain them.

The interesting fact is that the Government isn't here complaining about them. The Government is here complaining about the diversion of business receipts and where did it occur—at Issaquah.

It was at Issaquah where Mr. Forster was present day after day, where Mr. Erickson was present day after day under Mr. Forster's thumb. It was at Issaquah, where they could be handled, and isn't it inferrable, Ladies and Gentlemen, that the reason the checks were all coming into Issaquah was so that they could be handled by Mr. Forster and by Mr. Erickson under his direction in the manner he wanted them to be handled?

Now, in appraising the evidence in this case, and the credibility of the witnesses, it is important that you remember at all times the actual physical situa-

tion that existed in this case. You should keep in mind that Forster was running these businesses full time. He says seven days a week. And Mr. Erickson was working in these businesses, he says, full time. He says six days a week. Forster is there at Issaquah every day. At least, part of the day,—and two days a week he is there the full day according to the testimony. He is in his office next to Erickson with a glass partition in between, and [5242] buzzing Erickson to come in with his buzzer, and exercises general control over the whole business. Day after day, week after week, month after month, Forster and Erickson are handling these checks, and cash as they come in to Issaquah. They are there day after day, computing the accounts payable, paying the bills, taking the inventory, collecting the receipts, billing the customers.

Taylor, on the other hand, is down in Seattle. He has a large accounting practice, 20 to 30 retainer clients to keep him busy, and he is working long hours, doing work for those clients, and doing all sorts of errands for Mr. Forster, handling practically an employment agency for the bookkeeping staff of Alpine Dairy, handling a myriad of items, acting as a buffer for agents and insurance men and others that Forster wanted to get rid of. And, he is in Seattle and he is out at Issaquah how often? One day a month.

It was testified to he might have dropped in at other times during the month on his way to his summer cabin at Lake MacDonald. A social call. But, when was he there on business and working

on the books? One day a month. He was going out to Puyallup one day a month, and going 'way up to Mt. Vernon and Conway one day a month, and going to Renton Ice, a good part of this period, several [5243] days a week to sign checks, and going to Hub City Drug one day a month, and he was a busy man.

Now, when he went out to Issaquah that one day a month, what does he do? He has already received from Mrs. Wilcox her figures. He goes out there and Mr. Erickson has these journals posted, and has all the expense items broken down on a large adding machine tapes, separate both for Alpine and Issaquah.

You have seen the tapes that were supplied.

Mr. Taylor makes out these big complicated work sheets that you have seen so many of in this case, one for each business, and then he enters the figures in a ledger, and takes off a trial balance and works up a profit and loss statement and he goes over this statement with Mr. Forster and Mr. Erickson.

Now, Forster and Erickson obviously knew what Mr. Taylor was doing. They knew he was taking these totals he was giving them, and they knew he was making no audit or verification of these books whatsoever, and they knew that all he could do under ordinary, minimum compensation for what they were paying him was that he was doing along with all these other jobs that he was handling for Mr. Forster.

Now, Ladies and Gentlemen, when you consider this physical situation, undisputed in this case,

and [5244] keep that in mind, I say to you that it is obvious the extent that Mr. Forster has gone here in his attempt to throw the blame for this matter on Mr. Taylor.

Forster would have you believe that Taylor actually was running all these businesses and making all the decisions. Taylor, he says, made the business, as well as the accounting decisions, and all the financial decisions. He decided what businesses Forster should buy, and what he shouldn't buy.

He decided whether Forster should buy butter or whether he shouldn't buy butter, or whether he should sell it. He decided whether Forster should accept the directorship of the bank or whether he shouldn't. He decided how much money Forster should borrow, and decided the bank account on which Forster should draw his checks, individually, check by check, apparently. Forster says Taylor had and did have the power to cut his own salary—cut Forster's own salary, and he says Taylor actually ran the Renton Ice and Ice Cream Company.

I think those were just about his own words, despite the fact Taylor had no financial or stock interest in the company, Taylor was running the whole thing. In other words, Taylor coming out to [5245] Issaquah one day a month is pictured by Forster as the directing genius of this operation, and Forster working seven days a week, apparently taking orders from Taylor, and when Mr. Griffin stands before you this morning and says Mr. Taylor was incompetent and didn't know what he was doing, which story shall we believe?

Maybe neither story is correct.

Certainly, if Mr. Taylor was a genius and could make all the business decisions that brought about an empire that started with nothing, and ended up with millions, he was certainly getting underpaid at fifty dollars a month for each of these companies.

These statements, Ladies and Gentlemen, by Mr. Forster would be amusing, if it wasn't for the seriousness of this case. They simply illustrate the length to which Mr. Forster feels he must go to make Mr. Taylor the scapegoat for this tax evasion.

Mr. Forster offered no explanation except that Mr. Taylor knew about it, and should have reported it. Most of his defense didn't go to the items charged here by the Government. He went into a myriad of bookkeeping matters, which have nothing to do with the case, and his accountants couldn't explain, because here was an adjustment that couldn't be explained anywhere, and then there was something wrong about it. They [5246] went over twenty years on cross-examination with Mr. Taylor, with year after year, after year, bringing out year-end statements, and expecting Mr. Taylor to remember whether this figure, why this figure was different from this figure twenty years ago.

Frankly, I was impressed, myself, at Mr. Taylor's recollection, at the recollection he did have, and at the logical explanation he did have for those adjustments, but they have nothing to do with this case, Ladies and Gentlemen of the Jury. They are not what the Government is here charging as tax

evasion. They are merely an attempt to befog this case and snow it under with a myriad of details in an attempt to discredit Mr. Taylor, so that you will lose sight of Mr. Forster, the matters you are here actually to determine.

We say to you, Ladies and Gentlemen, that on a detailed consideration of this case, you will find that there is no evidence here sufficient to establish the guilt of Mr. Taylor, sufficient to establish that he knowingly and wilfully and intentionally evaded Mr. Forster's tax except the oral testimony of Forster himself, and, to some extent, Erickson himself on the stand, in this case, and we say to you that unless you can believe, beyond [5247] a reasonable doubt, that that testimony of Forster and Erickson is true, there is no basis in this case for convicting Mr. Taylor.

And, we submit to you, and I wish to discuss with you, during this presentation, that in the light of the contradictions in Mr. Forster's testimony, itself, and in Mr. Erickson's testimony, and in the light of the background and all of the circumstances of the case, the oral testimony of Mr. Forster and Erickson blaming Taylor, cannot be believed beyond any reasonable doubt, or at all.

Now, let's examine the actual issues of tax evasion raised by the Government as they relate to Mr. Taylor.

The primary charge, and it is apparently admitted by all counsel that this is a primary charge, the primary charge is that business receipts on a large scale coming into Issaquah, both by check

and by cash, were not recorded on the business books, and were put into Mr. Forster's savings account 198.

Now, there is no doubt on the evidence how this came about, how it was done. In most instances, the checks or the cash were received by Erickson, but at times, by Miss Neukirchen, and in any event, they [5248] were placed on Mr. Forster's desk without being entered in the books.

Mr. Forster or Mr. Erickson took them over to the Washington State Bank, and deposited them in Account 198. Now, Miss Neukirchen testified that Forster directed her to do this. She told you that Forster himself told her not to record those receipts on the books, and to put them on his desk, along with the invoices, and Mr. Forster testified that after he had accumulated those invoices, he destroyed them from time to time.

Erickson, however, refused through his testimony, to say that Forster had directed him to put these receipts on his desk, and he refused to say that Forster had told him not to enter them on the books. But Mr. Erickson had no other explanation for his actions than to say that this was the easiest way of disposing of them, a very lame explanation, if I ever heard one.

Now, Erickson knew that these receipts were going into Account 198, without any record being made of them, which could be used to report them for tax purposes. Erickson himself made out many of the deposit slips, and on those deposit slips, he himself each time having simply jotted down the

amounts, without [5249] any description of the source of the check which could be used to report them for tax purposes.

In fact, Forster testified, as I recollect, that he didn't even keep the savings deposit slips by which this money went into the bank, so that no record whatsoever was kept from which this income could be reported for tax purposes, and both Erickson and Forster knew it, and were doing it.

Now, what reason did Erickson have for his doing such a thing? As we will discuss later, Erickson had no reason to do this, unless he was directed to do it by Forster, and it is obvious that on the stand, he is attempting to cover up for Forster in this regard.

Now, other receipts, such as the Time Oil rebates, and the Farm Rental, came in currency directly to Mr. Forster, and handpaid to Mr. Forster, and what did he do with that? They also went into account 198, without any record being made of it whatsoever which could be used to report them for tax purposes. Erickson knew about these two, or at least, about the Time Oil, because from time to time, he checked the gallonage of Time Oil, and at least two times, I think the testimony is, to [5250] see that Forster was getting the right amount. He even made deposit slips, including some of the currency from Time Oil, so that he knew, too, that no record was being made of these amounts from which they could have been reported for tax purposes; and Mr. Forster told you that he knew that the taxable income of Issaquah Creamery was be-

ing reduced by the total original charge of the Time Oil Company for their gasoline, and he told you that he knew that this expense should have been reduced by the amount of rebates he was getting, and when he admitted that he did not give Erickson these figures, month to month, as he received the money, so that Erickson could put them on the books as a reduction of the gasoline expense, and that Mr. Taylor knew, it seems to me he even testified that he knew, that the figures on which Issaquah Creamery was paying tax were the income figures which included the full deduction of the original charge by the Time Oil Company for the gasoline.

Now, this failure to record business receipts is the very essence of this case.

We have in evidence a stipulation, Exhibit 238. That stipulation lists 283 checks which were diverted in this manner. The Government says that there [5251] were more, but here are 283 checks and it includes checks from a great variety of sources, and representing a great variety of receipts. It includes milk pool payment checks, and checks from the Borden Company for payment of casein, checks from Consolidated Products, and checks for the sale of plastic cream, and checks from the Kittitas Novelty Association representing sale of calendars, and checks from Stephenson, representing sales of butter, checks from the Daisy Dairy representing rent, and checks from Jones and Bronson, the law firm, representing collections on bad debts, checks from Puget Sound Catering

Company, and others representing miscellaneous sales, freight refund checks from the Northern Pacific, and checks from the Western Condensing Company for the sale of whey, and checks from various companies representing sale of syrup, and checks for sale of beer bottles and checks coming in on the sale of building materials, and gasoline, and checks coming in for sale of powdered milk, and rebates from the pool companies, and on loans and all other receipts. It is obvious, when you consider, Ladies and Gentlemen, the tremendous variety of checks diverted and not recorded on the books and put in account 198 that Erickson knew where to record them, and he knew where to put them on the books, and that Forster also knew that this [5252] income was not being recorded on the books, although he contradicted himself, back and forth, extensively on this matter, as I will outline to you when we commence again after lunch.

The Court: Ladies and Gentlemen of the Jury: We will now take the noon-day recess. The Court calls your attention to the admonition given you on similar occasions, and cautions you you are not to reach any conclusion until this case is finally submitted to you after all the argument and the instructions of the Court.

You may now be excused until 1:45.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 12:16 o'clock p.m. a recess was had in the within-entitled and numbered cause until 1:46 o'clock p.m. May 11, 1954, at

which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and [5253] all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. LeSourd.

Mr. LeSourd: Thank you, your Honor.

Ladies and Gentlemen of the Jury:

My partner tells me that just before we recessed, I used Mr. Taylor's name when I meant Mr. Erickson. It will probably happen again many times when we are speaking of all these people, but I am sure the context of what I say will make clear to you what I mean in that respect.

When we adjourned, we were speaking of these diverted business receipts, and of the fact that Mr. Forster knew that they were not being entered in the books.

He, in his testimony, contradicted himself on this point from one statement to the next, but he told you in the course of that testimony that Erickson had told him that he had no place to run the receipts through the books, and, furthermore, Mr. Forster's sworn statement to the Agents throughout the trial was read to you where he specifically

stated that he knew they were not running the cash through the cash sales.

So, we have this diversion of the checks [5254] occurring at Issaquah, going into Account 198, not being entered on the books, and no record being made of all those items from which any book entry could be made, or from which a tax return could be filed.

Now, where is Taylor involved in all of this? Admittedly, Taylor was not present day after day when these checks and receipts were coming in and being put in Forster's desk. Taylor was not receiving or handling the checks nor was he putting them in the bank account, and when he came out at the end of the month, he was given figures from Erickson's books, and there was nothing in these figures that would indicate in any way that these business receipts were omitted and never recorded on the books. Even if he had audited these books right down to the very last invoice, he never would have found out that these receipts were not being put in the bank account and recorded on the books.

Mr. Erickson told you that in most of the cases he made no billings out for these items which were diverted, and Miss Neukirchen told you that where invoices were made out, they were put on Mr. Forster's desk, and he told you that he destroyed them.

No better system could be devised for [5255] accomplishing a large-scale diversion of income and preventing your outside accountant from learning of it, no matter how far he went in verifying the details or auditing the books.

So, apart from the oral testimony of Mr. Forster, there is nothing in the evidence in this case that indicates that Taylor knew a single thing about this large-scale diversion of income.

Now, Forster's assertion is that he told Taylor about this omission of income, and that Taylor should have reported the income going into Account 198. When Forster was asked what figure he gave Taylor, he first admitted that he didn't keep track of the items that went into 198, but later, he claimed that he told Taylor what the amounts were.

Later, again, he revised his position again and said as to these checks that he didn't give Taylor figures on them, and that he thought that they were on the books. Still later, when he was confronted with his statement that Erickson had told him that there was no place to put them on the books, he again reversed his position and said that he had mentioned them to Taylor, and Taylor knew they were going into 198.

He admitted then, however, that he didn't [5256] keep track of the figures, and he had no explanation of how he could give figures to Taylor, when no record was made any place of those figures.

You will remember then that on Mr. Griffin's redirect examination, Mr. Forster was shown check after check coming in to Issaquah from other companies in which Forster had an interest, and he was asked whether it ever occurred to him to tell Taylor about these checks, and he said "No," it did not ever occur to him to tell Taylor about them.

On my recross-examination, I asked him if that

were true, how he thought Taylor knew about them. "Well," he said, "Taylor knew about them because I told him." And I said, "If it never occurred to you to tell him about those checks, how did it happen you told him?" And he sat there, and had no answer and he couldn't answer that question.

Now, with respect to the Time Oil rebates, the situation is the same. Forster admitted that he didn't designate on his deposit slips the source of the cash. It went in as currency on this one item. No way of telling what went in from Time Oil. And, he further admitted he kept no other record of Time Oil.

Yet, he made all sorts of contradictory statements about telling Taylor about this item. First, [5257] he told you that he told Taylor when he originally made this deal with Time Oil, and that later on, it was two cents a gallon and he told Taylor about that, and when we asked him how Taylor was to get or did get the amounts, which he thinks should have been put on his tax return, he said, "Taylor could have received that information either from me or the Time Oil Company."

And then later he told you he gave Taylor this information at the end of the year, and that he gave him an approximate amount that had been received from Time Oil Company.

We asked him how he got that approximate amount when he didn't keep any records, and when he was questioned about this, he said it was an approximate amount, and when Taylor asked him about the interest and donations and other items

at the end of the year,—then I read Mr. Forster's sworn statement to the Agents, in which he stated that he never mentioned to Taylor the amount of the Time Oil Rebates, because he didn't know the total amounts for the year. Mr. Forster admitted making this statement, and what does he do? He again reverses his statement and says he didn't go over the thing at the end of the year, as previously said, but that he told [5258] Taylor the amount he was getting monthly.

That was on redirect.

Then, again, on my recross examination, he said, well, he didn't give Taylor a figure every month; he simply told Taylor the approximate amount that it was every month, and there we have him back and forth in contradictory positions, and all the time, it is evident from the physical exhibits that he never kept a record, so that he knew what he got to tell Taylor to put in his returns.

Mr. Taylor tells you he had heard they were doing business with Time Oil and they were getting a rebate, but he assumes, like with the rebate from other companies before, that it was being properly handled and recorded in the books out at Issaquah.

It is obvious that Forster on this is not telling the truth. He even tells you both sides of the story and contradicts himself.

He received this large amount of income knowing it was not being recorded any place, and not going in his returns, and he wasn't keeping a record or giving Taylor or Erickson or anyone else the infor-

mation on which it could have been put in his return.

Now, apparently realizing that, realizing that his testimony was unbelievable on that score, [5259] Mr. Taylor fell back on the argument——

Mr. Cox: (Interposing) Forster.

Mr. LeSourd: (Continuing) Excuse me. Mr. Forster fell back on the argument of saying that Taylor should have returned this income for him because Taylor had heard mentioned the balance in account 198.

Now, Forster went to great lengths in this case to try to establish that Taylor had heard or knew the balance in Account 198. Why he did so, I certainly never will know, because Mr. Taylor took the stand and said certainly, he knew that Mr. Forster had a savings account at Issaquah, and it was entirely possible that the balance in that account was mentioned in his presence from time to time, or at times, but nevertheless, Mr. Forster's defense puts on Mr. Strack and Mr. Donaldson twice, and they put on Beadon Hall and they introduced A-61, this little personal list of assets that Mr. Forster says he found in his bureau drawer,—he never found another, but he found that in his bureau drawer—all of which amounted to what? To show that Taylor knew the balance in 198. What if he did know it? What is there in the balance, and assume he did know it, what is there in the balance of [5260] account 198 that would ever show to Mr. Taylor, or anybody else, that there was all these business receipts coming in to Issaquah day after

day, and not being recorded on the books, and being diverted into this account?

The balance, if you will look at the bank statement, in evidence here, practically didn't vary all through this period. At the end of every year, it was just about the same. In fact, in 1949, there was a sharp drop from 1948 in the balance in that account.

How could anyone, even if he took the balance at the end of each year and compared them, have known there was $25,000 or $50,000, or whatever it was, a year going into that account from diverted business receipts and then being drawn out for other purposes? There was nothing in that account that would enable Mr. Taylor to make any returns of that income or enable him to know that there was that income being diverted into that account and not recorded on the books of Issaquah Creamery Company.

Now, furthermore, it is the fact that Mr. Forster had a large balance in this account, and had personal assets. That certainly wasn't anything surprising, or that should cause suspicion. Forster had [5261] been drawing $24,000 a year since the early '30s and while in some of the tough years, he couldn't draw it at one time, he got it later, and he got it without taxes in effect because the company was paying his tax, and Mr. Erickson testified that the taxes paid, which were charged to his, perfectly properly to his, proprietorship account in Alpine Dairy and taxes paid in 1945 to

1949 amounted to far more than $100,000 which were paid for him.

Moreover, in this proprietorship account of Alpine Dairy, he had a drawing account, and the evidence shows he drew large amounts from that account in the various years. He was drawing large amounts to pay for these investments he was making from that account. All that is proper in a wholly owned business of that sort, but the money is credited to the proprietorship account to pay taxes on it, and that is your ownership of the business on which the tax is paid. He can withdraw it at any time he wants to, and it is clear in the evidence that he did make substantial withdrawals. So, what is there in $100,000 deposit in the bank account that would make Taylor think that there were these large amounts of income from diverted receipts which were not being reported? There, as I say, is the most [5262] important part of this case —the diversion of these business receipts at Issaquah.

And the next most important part of this case, Ladies and Gentlemen, is the charging off of personal expenses to business expense on a very large scale.

Here, again, we say to you that there is no credible evidence that Taylor knew about this, or was in any way involved in this thing except the oral testimony of Mr. Forster, and even—on this point even, there is no such evidence.

Now, the figures from these books, as I have said before, were given to Mr. Taylor at the end of the

month by Mr. Erickson. You saw the adding machine tape and expense items were broken down in these long tapes, and they were listed by name and number, plant expense so much, supplies so much, and advertising so much, and so on, down the line, through all the expenses of this large business.

We find now that buried in those sums were large amounts of personal expenses of Mr. Forster which had been paid by Mr. Erickson and had been charged off to these various accounts, but there was nothing in what Mr. Taylor got that would indicate that there was anything in the journals of Mr. Erickson, [5263] even if Mr. Taylor had gone into every item in the journal, that would have shown you—shown him, excuse me—that would have shown there was these personal items charged to business expense.

As Mr. Eppler told you, in a business of this magnitude, a check may have been written to almost any payee and have been a perfectly legitimate business transaction, and all that Erickson had in those journals was the name of the payee and the amount, and, suppose Mr. Taylor had been auditing the books and had even gone down to the check stubs, he still would have learned nothing more.

In fact, Mr. Griffin introduced in evidence—I think it was A-134,—the check stub of the Puget Sound Products, Incorporated. What does it show? It just says Puget Sound Products and the amount, and the date. That is all. Even if Taylor had gone to the check stub, he wouldn't have known that these personal expenses were charged to business

expenses. Who would know? Mr. Forster knew, and Mr. Erickson knew. The only way Taylor could have found out, was to take each one of the checks and to quiz Forster and Erickson about them. But, they knew about them. It was their responsibility to put those in the books properly in the first place. [5264]

Now, how do they in any way attempt to blame Taylor on this transaction? They didn't say they told Taylor about this. They couldn't very well, because these checks were all of a different nature, day to day, and coming in and charged to different accounts, and Taylor wasn't there, and it would have looked ridiculous, so, what did they do? They put two accountants on the stand, Mr. Alkire and Mr. Gorans, and they testified that it was the responsibility of an accountant keeping a general ledger—he was responsible for the accuracy of every single figure that goes in that ledger, no matter what he is paid, nor what he is hired to do, no matter whether he has the power, right down to the very last invoice, detailed check, or oral examination.

Now, Mr. Alkire and Mr. Gorans are respected members of the accounting profession in this City. It is obvious, however, they are a part of the same firm, and it is obvious that their partisanship lets them take the stand and testify without adequately investigating the particulars before they took the stand. They both admitted on cross-examination that they themselves do not do this type of work. They do not keep general [5265] ledgers, and they

admitted that they did not inquire of the accountants in the City, and it is a very large practice, that do keep ledgers as to what the responsibility of such accountant is, and they further admitted that they didn't check the Treasury Department's ruling on the subject.

We put on the stand Mr. DeFriel, a certified public accountant, with many years' experience in doing this work. He never met Mr. Taylor until the day he walked in to testify, and he told you that this type of employment is very common in the City among the smaller accounting offices because many, if not most, small business enterprises do not want to go to the expense of hiring accountants to make a thorough audit of their books at the end of the year. They are willing to rely on their own bookkeeping staffs for the accuracy of the figures, but they would like to have an outside accountant keep the general ledger, and make the tax returns, so as to get the benefit of his knowledge as to deductions, depreciation rates, and other technical things of that sort.

Mr. DeFriel told you he was familiar with the custom and the practice and the responsibility. He was familiar with the Treasury rules on the [5266] subject, and he said emphatically to you that an accountant keeping a general ledger is not responsible for the accuracy of the figures given him. He has no duty to verify them. He has the right to rely on the fact that they are accurate when they are given to him.

Now, we point out to you that under the instruc-

tions which we believe the Court will give you in this case, Mr. Taylor is responsible here only for actual knowledge. He is not responsible for what he did not know, even if he should have known, but, nevertheless, we say to you, that it is clear that an accountant, a public accountant, handling a general ledger, and taking figures given to him by his client, has no duty of making an audit or of verifying those figures in any way.

But, as I said here, even if he had tried to verify this, he would have found nothing.

The fault here, Ladies and Gentlemen, in this case, lies not in the keeping of the general ledger, as Mr. Griffin would have you believe. It lies in the fact that out at Issaquah they didn't enter basic material in the books, and the cash in the diverted receipts, and they put them in the books improperly in the case of personal expenses so that no accountant handling the general ledger, no [5267] matter how the general ledger was handled, even if every posting reference was there, and every "i" dotted, it wouldn't have made a bit of difference in this case, because there is where the income was omitted, on which the tax was not paid.

Now, the same equivocalness and contradiction in testimony that characterized the position of Forster and Erickson on these first two matters, also characterized the 1949 year-end adjustments at Issaquah Creamery Company.

Erickson made four changes in his books. He duplicated the Stephenson invoice. He—that was about eighteen thousand. He duplicated the Con-

solidated invoice. That was about eighteen thousand.

And, increased the milk drafts five thousand in November, and five thousand in December.

Now, the effect of these four changes was to increase accounts payable by eighty thousand dollars.

The question is, how did this come about and who was responsible for it?

Mr. Forster, by his own admission raised the deuce about the profit of Issaquah Creamery Company, at the end of the year 1949. He told Taylor it was 'way out of line, and impossible. Taylor says [5268] he even threatened to get another accountant.

Erickson admits that he was in on part of this conference, and Taylor says he was there most of the time.

Certain facts are in agreement. It is agreed that the conference was held. It is agreed that Forster objected violently to the profit. It is agreed that Taylor came back later, and that meanwhile Erickson had made some changes in his books, and that he gave corrections to Taylor, and that Taylor made the corrections on his work sheet, which is here in evidence, and they went on the tax return. And, it is agreed that Forster came in and signed that tax return before it was filed.

Now, the other facts, however, are in dispute. Erickson testified that following this meeting with Forster and Taylor, that Taylor came out and told him to make the changes in his accounts payable, and that he did so. Taylor, on the contrary, tells

you that when Forster raised this fuss about this high profit, Taylor told him, "Well, this is what the books show. I am satisfied that my computations from the book figures are correct, and this is it. If you are so sure that there are mistakes, supposing you go ahead and try and find the mistakes, and if you find mistakes, I will keep my ledger [5269] open so that I can make the changes if you find those mistakes."

And, Taylor says that he waited until the first part of March, and no word was coming, and he 'phoned Mr. Forster and was told to 'phone Mr. Erickson, and was told "There are changes."

And he goes out to Issaquah, and was given changes, and he puts them on the tax return, and he tells you that Forster came in to sign the return, and he went over the changes with Mr. Forster and he told Mr. Forster he was getting them from Mr. Erickson and it was up to Forster and Erickson to substantiate them.

Now, who is telling the truth?

Mr. Forster's, and Mr. Erickson's, testimony on this score, like the testimony on the other is, we submit to you, contradictory and unbelievable. Erickson, in a sworn statement to the Revenue Agents that was read during his cross-examination, stated that Taylor came out of this meeting at the end of January, 1950, and told Erickson to increase his accounts payable eighty thousand dollars, and Erickson in that sworn statement went on and said that in February, 1950, following this conversation, he did so, and that he increased his accounts pay-

able by [5270] eighty thousand dollars, and that he did so, he went on in that sworn statement, by duplicating the Stephenson invoice, by duplicating the Consolidated invoice, and by increasing the milk drafts ten thousand dollars—total eighty thousand dollars.

Early in the trial, however, Mr. Eppler was on the stand and testifying to the statements that were made to him before the trial, and during Mr. Eppler's examination, we showed you that Erickson's statement was not true, because the Stephenson invoice, which he swore to the Agents he had changed in February, 1950, had not only been duplicated prior to January 15, 1950, and had been cleared off the books January 15, 1950, by a phoney check written to Stephenson, but deposited in the Issaquah Creamery Company bank account.

What happened in the light of that testimony?

Mr. Erickson took the stand at the close of the case and shifted his story entirely. Now, he testifies that Mr. Taylor came out of that meeting and told him to raise his accounts payable sixty thousand dollars, and not eighty thousand dollars and he further says that back in December of 1949, that Taylor [5271] told him to increase accounts payable twenty thousand, something he never told the Agents whatsoever, and that he duplicated the Stephenson invoice at the end of December, 1949, because Taylor had told him to increase the accounts payable twenty thousand dollars.

Now, Erickson likewise, between the time he testified to the Agents and the time he testified here

on th stand, had worked up an expanded set of reasons for these changes, as Mr. Cox read to you during his cross-examination of Erickson, Erickson in his sworn statement had said that he had reduced the inventory at the beginning of 1949 by $29,000.

Now, no other reduction of inventory was mentioned by him to the Agents. On the stand here, however, he talks about a fifty thousand dollar reduction of inventory in 1949 as the basis for the year-end 1949 adjustment. Not twenty-nine thousand. Now it is fifty thousand.

Now, this change in testimony, we submit, was probably made in order to tie in with a fifty thousand dollar figure that Taylor had temporarily used in March and April, 1949, to indicate that there might be something wrong with the books in that regard. The purpose is, clearly, to make it appear [5272] that there was some substantiation to Erickson's claim that he was instructed by Taylor to make these adjustments.

However, even on this, Erickson's testimony is full of contradictions. While he at one time claimed that he reduced the 1948 inventory $25,000 at the end of 1948 and again later in his testimony he said he did not reduce it at the end of 1948 by $25,000.

What is the fact as to that?

He was asked what the true inventory was at the end of 1948 and he said it was close to $100,000. Now, the physical exhibits, his own inventory slip, which is in evidence in this case, shows an inventory of eighty-three thousand dollars. So, it is ob-

vious on his own testimony that there was not a $25,000 reduction of inventory, and it is apparent that the only reduction of inventory at the end of 1948 was the $10,000 which Mr. Taylor took out of merchandise inventory and put in the building material inventory, as he told you on the stand, and which is shown on his work sheet, which, of course, had no effect on taxes whatsoever.

Now, if reduction of inventory were made by Erickson monthly during the intervening months of [5273] the year that would have no bearing on taxes.

Most businesses, as a matter of fact, Ladies and Gentlemen, do not take actual detailed inventories month by month in their business. They make estimates of their inventory all during the year. The time the inventory is important for tax purposes is the closing inventory of the year, and so it would make no difference in this case what the inventory was estimated to be, or how the estimate was arrived at during the year.

It is only that year-end inventory that has any tax significance. The $50,000 offset that Mr. Taylor used in March and April, 1949, to flag something would make no difference at all in this case, because, as I say, the matter of inventory on monthly statements is immaterial for tax purposes and those estimates are made by the management in any way that they see fit.

Now, Erickson, however, said that in certain months in 1949, he reduced the inventory fifty thou-

sand dollars, and he further said that he did this on Taylor's instructions.

Now, on Mr. Maxwell's cross-examination, he said that in February, 1949, he reduced the inventory for January 31, 1949, by fifty thousand dollars, and that [5274] he made a similar reduction each month thereafter in the figure that he gave to Taylor down to and including December 31, 1949.

Now, that was his last testimony on the subject. Previously, he testified that he gave Taylor the actual inventory in March and April, 1949.

Which of the two statements is true?

Not only is there inconsistency on his testimony of the inventory figure during 1949, but further inconsistency in his testimony on the ending inventory that he gave to Taylor at the end of 1949. That is, the inventory he gave to Taylor on the last of January, 1950, when Mr. Taylor came out to Issaquah.

Erickson's final testimony on this matter under recross examination by Mr. Maxwell was that this inventory figure that he gave to Taylor was fifty thousand dollars less than it should have been, but prior thereto, he had attempted to justify his duplication of the Stephenson invoice, which obviously occurred before January 15, 1950, by stating that his purpose in duplicating it was to increase the year-end inventory, and that he did increase the year-end inventory by twenty thousand dollars to offset this Stephenson invoice. If he had done this, then the inventory given to Taylor at the end of 1950 under his [5275] own testimony that he was

consistently dropping this fifty thousand dollars, would have been only thirty thousand dollars reduced, not fifty. In one point, he says that, and at one point, he says it was fifty thousand reduced.

Now, Erickson's entire testimony on this subject is exceedingly vague and contradictory. He said that he didn't like making these changes, and that it was something he had never done before.

If so, it must have stuck clearly in his mind and why did he not remember all of those details when he gave his testimony on this subject to the Revenue Agents a year or so or more before this trial?

Now, sometimes when one is confronted with a very difficult set of facts, it is very illuminating to step back a few paces and to try to get a general prospective of the whole thing.

Let's do that here. Let's see if we can see these facts in their proper setting in this case.

Now, looking at this whole picture, we see in the first place that it was Forster who was raising the fuss about the income. No one else had any reason to care whether the income was high or low, large or small. Forster, however, had to pay tax on that income, and he was the one who was squawking about it. [5276]

The next thing, when we look at this whole set of facts in perspective, is that the amount of inventory was peculiarly within Forster's and Erickson's knowledge. They were the ones that were taking the inventory. The inventory was taken by Forster through his plant manager, and Erickson said he was pricing the inventory.

Taylor was not there when the inventory was taken.

Now, Erickson tried to tell you that Mr. Forster never even looked at the inventory in this case. It is inconceivable to anyone who has had any business experience that the owner of the business would pay no attention whatsoever to his inventory. As, I think Mr. Moriarty said to you, how would he know what he had to sell? Mr. Taylor, nor Erickson, had incentive or reason to tamper with the accounts payable or the inventories of this business.

Their jobs were to keep the books and make out the tax returns, and no reason appears why they on their own, or either of them on his own, should have made improper charges in these figures. Forster was the only one to whom this was important, and he was the one who was squawking. I say to you, if orders came from anyone to Erickson to make [5277] these changes, it would certainly appear probable that they came from Forster.

Mr. Erickson made these changes at the end of 1949 in his own books and in his own writing. Consequently, he has to offer some explanation to you for it. Either he is completely responsible for it, or he must say that someone ordered him to do it.

In his testimony, he is obviously covering up for Forster. You watched him on the stand. You heard his testimony about putting these checks on Mr. Forster's desk without ever saying a word about it—mum, is the word—he puts them on his desk, and Forster hands them back, and he writes out a deposit slip and he never says a word. He is obvi-

ously covering up for Forster. He borrowed money from Forster. He is dependent upon Forster for his livelihood, and he took the stand and testified under that basis. He can't say that Forster made the—he can blame it on Taylor.

What is more natural than Erickson taking the stand and saying, "Taylor told me to do it. Taylor told me to do it."

But, Erickson's testimony is simply unbelievable upon that score. He says, "I didn't like to do this." Never done it before, but Taylor told [5278] him to, so he had to do it.

And, he says, he never bothered to tell Forster about it, never bothered to tell him he was doing it. He never bothered to ask Forster whether he should do it, and he even put that phoney Stephenson check in front of Forster, and had Forster sign it, and never uttered a word that he was making changes to save Forster fifty thousand dollars in taxable income.

Now, is it conceivable to you, Ladies and Gentlemen, that Mr. Erickson, working there at Issaquah, day in and day out, under Mr. Forster, under his thumb, being buzzed in and out of his office, being paid by him, dependent upon him for his livelihood, would have made changes that he thought were improper and he didn't like to do in these books?—The changes being for the benefit of only one person, Mr. Forster, without even asking Mr. Forster whether he had to do it? Is that conceivable to you?

Neither Mr. Erickson nor Mr. Taylor had any

reason to do anything except on orders from Mr. Forster, and Mr. Erickson is the one who did it, and he made the changes, and I say to you that there is only one place that this order could have come from, and that is from Mr. Forster. [5279]

Now, Mr. Forster's testimony about these changes is even more contradictory and unbelievable than Mr. Erickson's.

In the first place, Mr. Griffin, in his opening statement here, said that it was at the end of November, 1949, that this conference occurred, in which Mr. Forster objected to the profit, and Mr. Griffin said to you that it was the big profit in November, or a profit in November, that he was objecting to, because November, in the history of the business, never showed a profit, and he said that at the end of November, this November profit being out of line, that Forster objected to it. Mr. Griffin could only have received that information from his client, Mr. Forster, and it is obvious that Mr. Forster was trying to admit to an annual 1949 figure, which was used for income tax purposes.

But then, when the work sheets were introduced in this case, the work sheets showed clearly that there was no profit for November. There was a loss for November, and then Mr. Forster was required to take the stand and admit that, yes, it was the conference at the end of January, 1950, that he objected to the income, but then, what does he say? He says at first he didn't object to the annual figure, it was the [5280] profit for the month of December he objected to, and that December never showed

a profit and he said, "Here comes Taylor, and figures out a profit of twenty thousand dollars for the month of December, and I told him it was impossible."

Well, as a matter of fact, even at that point on the stand, Mr. Forster first said there was a profit shown by Taylor in both November and December. We first showed him the November statement showing a loss, so then he said, "Well, I didn't testify there was a profit in November; it was December."

But, the work sheets themselves showed that the original figures that Mr. Taylor arrived at at the end of January, 1950, showed a loss of about twenty thousand dollars for the month of December, and not a profit of twenty thousand dollars. Mr. Forster went back and forth on this. First, he said that there was a twenty thousand profit in December, and he said there was a twenty-five thousand profit in December, and then he said Taylor told him the annual profit looked like $127,000, and then on redirect by Mr. Griffin, he said it looked like 110 or 115 thousand. The second is that Mr. Taylor's work sheet, when originally put in front of him, and it is here in [5281] evidence, when originally put in front of him at the end of January, 1950, showed $101,000 profit, and a loss for the month of December.

So, then, Mr. Forster admitted finally that he did take objection to the annual figure, the annual profit figure, and then he said that—he said it was impossible, and that he told Taylor to look it over, and that is all he knows about it.

That is all he knows about it—never heard about it again until after the investigation started. Admits he signed the return, but he didn't inquire, and he didn't ask either Erickson or Taylor what had happened; whether they found anything.

No, he raised this big fuss and said it was impossible, that there must be something out of line, that he couldn't have made a profit of that size, but yet he would have you believe he went over and signed the tax return without even asking whether they found anything or didn't find anything.

Now, I say to you that that is completely unbelievable. No man, least of all a man who had built up a chain of enterprises by controlling every penny and by operating more cheaply than his competitors and out-competing some of the largest firms in this nation, no man who had done that, or any businessman who had [5282] truly believed that a profit was too high and that it was wrong and that there was error and said it was 'way out of line to the year before, no such man would have signed such a tax return and never asked anybody whether they had found anything wrong.

His testimony is simply not credible.

Mr. Taylor's testimony—and I point out to you that you did not hear Mr. Taylor's testimony contradicted or impeached while he was on the stand—his testimony on these 1949 adjustments has been consistent all the way through, for the Agents and here. He says he went in, he figured out the profit, he showed it to Mr. Forster and Mr. Erickson was there and Mr. Forster raised Cain about it, and he

told him that this was what the books showed and that the figures were accurate and he said that if there were any errors, there were errors on Mr. Erickson's books, and if there were errors, he was glad to correct the figures, and if there were errors, he would hold his ledger open and he could reflect it. In the beginning of March, 1950, he goes out and he is given these changes, and he writes these changes on the work sheet correctly in a separate column for everybody to see, and he makes the corrections caused by them on his work sheet, and he makes out the income tax return, and he has Mr. [5283] Forster come in, and then explains them and points out what the figures are that are given to him, and he says, "These come from you, and it is up to you to substantiate them."

Now, all of this happened, Ladies and Gentlemen, at a time when Mr. Taylor was in difficult troubles of his own. On March 2nd, that same time as he was making these changes in this inventory, he pled guilty to tax evasion in his own case. Is it believable that any man at that time, under those circumstances, would have consciously and knowingly and wilfully altered his figures to wrongfully reduce the profit by fifty thousand dollars of Issaquah Creamery Company, knowing that they were—that those entries were false? It just is simply not believable, and we say to you that looking at the thing as a whole, that looking at the contradictions in all of the testimony, looking at the consistency in Mr. Taylor's testimony, looking at the motive of the people involved, that it is obvious that when

Mr. Taylor left that conference, Mr. Forster instructed Erickson to make these changes, and he knew all along that they had been made, and it was on his direction and for his benefit that the changes were made in these books at the end of 1949. [5284]

Now, the only other issue that the Government raises as to Issaquah Creamery Company is the issue as to the changes in milk price in 1948 and 1949 between Issaquah and Alpine. Mr.—there is no evidence in the record that Mr. Taylor had anything to do with that whatsoever so that I will pass it over except to say that I, myself, can't see where they have anything to do in this tax case.

They were buying and selling milk, and entitled to put any price they pleased on it, and I can't see where that should be in this case at all, but that is no concern of mine.

Now, in addition to these matters of Issaquah Creamery, and, of course, some of the matters I touched on heretofore bore on Alpine, too, because some of these expenses were charged off at Alpine, on personal expenses, but, in addition to these matters, the Government in its exhibit 279, and you should look at 279, and 280, they are the details of what the Government charges in this case.

In 279, the Government claims that Mr. Forster got income from other corporations in which he held an interest which should have been reported, and which was not reported. [5285]

One of these is Simonson and Forster. Mr. Forster was paid one hundred dollars a month from 1948 and 1949. Mr. Moriarty yesterday said some-

thing about 1945, 1946, 1947, but there is no evidence of that in this case.

We are dealing here with 1948 and 1949. Now, there is a conflict in the testimony between Mr. Taylor and Mr. Forster, as to what happened at the end of 1948 with regard to this matter.

Mr. Taylor told you that he talked to Mr. Forster about it, and that these hundred dollar checks had been sent during the year, but it hadn't been determined what they were, whether they were going to be a loan or salary, or what they were, and they were set up in the general expense column, meanwhile, and that he talked to Mr. Forster about it at the end of the year, and Forster said it couldn't be a salary, because the company was short of capital and that, he said, "Talk to Mr. Simonson about it," and that Mr. Simonson had some arrangement on it, and that they would have to put it back.

And, Mr. Taylor says he talked to Simonson and that Simonson was buying equipment out of his funds, and that he would collect the $1200 for Mr. Forster, and that should be so handled on the books [5286] of the company, and we have the work sheets of Mr. Taylor at the end of that year in evidence in this case.

This was a work sheet made at that time, and no afterthought made for the purpose of this trial, and it was made at that time and in that work sheet the one hundred dollars is taken out of general expense and charged back to income of Simonson and Forster.

In other words, no deduction was taken for that one hundred dollars, so it was obvious it was not to be treated as salary to Mr. Forster in any way. It was charged back to income, and it was set up in the equipment account—rather, it was an item in the equipment account for this equipment which had been put in. It was larger in amount than this, but part of that was the $1200 which Mr. Forster owed and the $1100—and the $1100 figure which Mr. Simonson himself had owed to the corporation, and that was how the equipment was thereby paid for.

In other words, at the end of 1948, this was to be treated as a loan to Mr. Forster, not as salary to Mr. Forster, and he was to repay this money, and it is reflected in the accounts of the company at the time in accordance with that basis. Mr. [5287] Forster says no such conversation occurred, but one of the girls from Simonson and Forster told you, and she was—I have forgotten her name —she was the girl who was working in the office at the beginning of 1949, and she told you that she overhead a conversation between Mr. Taylor and Mr. Simonson about this.

Unfortunately, Mr. Simonson has passed away and can't confirm what that conversation was, but here is something that happened at the time and the amounts were taken out of expense. They were charged back to income and they obviously were not to be treated as a salary or compensation to Mr. Forster at that time.

Now, the same thing was true of 1949. Unfortun-

ately, the work sheet for 1949, which was present here prior to the trial, got lost. I can well appreciate how it would get lost in the state that the records were in in the room upstairs, where they were held, but Mr. Taylor told you that the same type of adjustment was made at the end of 1949.

This is a good stopping point, your Honor.

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-afternoon recess, and the Court calls your attention to the admonition given you on similar occasions, and asks that you heed it on this [5288] occasion.

You may now be excused.

(Whereupon, the Jury retired from the court room.)

(Whereupon, at 2:44 o'clock p.m., a recess was had in the within-entitled and numbered cause until 2:59 o'clock p.m. May 11, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the court room?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. LeSourd.

Mr. LeSourd: Thank you, your Honor.

Ladies and Gentlemen: Another one of the sub-

sidiary issues raised by the Government in this case is that Mr. Forster should have included in his returns, or that Mr. Taylor should have included for him, the amounts in each of these years equal to sums paid to Mary Finstad with regard to the purchase of stock in Finstad and Utgard. They say that Mr. [5289] Taylor for a number of these payments should have seen that an equal amount was included in Mr. Forster's return. This situation is a very complicated one and much more appropriately would be in the Tax Court for a real argument as to whether it is taxable or not than in a criminal case where we are dealing with knowledge and criminal intent.

The factual situation is that Egeness, together with some associates, was purchasing the shares of stock of Finstad and Utgard from his aunt, Mary Finstad. This was on a contract. Mr. Egeness and his associates were obligated to pay the balance of that contract.

For several years, they had been making payments, and they did show they were doing so, by having those payments made by check of the company, Finstad and Utgard, and charged to their salary account as the personal expenditures of Mr. Forster in this case should have been charged on Mr. Erickson's books.

Forster entered the picture at that time and entered into an agreement with Mr. Egeness and his associates, giving to Forster the right to buy their interest in their contract with Mrs. Finstad. This agreement is in evidence. You can read it. It [5290]

doesn't obligate Forster to do a thing. Forster has a right to stop at any time, and not be liable for any further payments whatsoever, but he had the right, if he so desired, to buy out this stock, to buy the interest in the contract, and to make the payments to Mrs. Finstad and to buy the stock.

Now, after this agreement was entered into, Mr. Egeness went right on as before, making the payments to his aunt, Mrs. Finstad, by corporate check of Finstad and Utgard, charged to his salary account. Mr. Egeness was still liable to Mrs. Finstad; Mr. Forster was not. And, these payments, as they were made, month by month, extinguished Mr. Egeness' liability. He was directly concerned. If Mr. Forster had decided not to go ahead with this, Mr. Egeness would have had to pay for it, and the stock would have been his.

Mr. Griffin spoke about Mr. Forster having some credit on this obligation. Mr. Forster had no obligation on this credit to Mrs. Finstad.

The Government contends, for some manner of reasoning, that these payments are taxable income year by year, as made to Mr. Forster on his income tax returns, and the claim is that the salary of Mrs. Egeness, to which these were charged, was not really a [5291] salary of Mr. Egeness, and that these checks were merely distribution of corporate funds used to pay off Mrs. Finstad, and their reasoning from that, or the reasoning of the man they put on the stand upon that was it was a constructive dividend of Mr. Forster.

Now, before Mr. Forster arrived on the scene,

Egeness had been getting a salary of $450 a month plus purchasing 25 percent interest in the business. Mr. Forster told you he agreed with Egeness he should get the salary he was getting, plus 10 percent of the profits, but Mr. Forster says what he agreed to with Egeness was $300 a month plus 10 percent of the profits. Egeness testified his salary was $600 a month plus 10 percent of the profits, and he testified it was arrived at at a meeting in which Mr. Forster was present, as well as Mr. Taylor. Mr. Forster denied being present at that meeting.

Mr. Forster further tells you that he didn't know anything about the making of the payments to Mrs. Finstad, and he didn't know how they were being made. He even says he never bothered to inquire in the four or five years that are here involved, and after he entered into this agreement as to how they were being made. [5292]

I just wonder whether he had any interest in the contract or not.

Now, there is a further fact in dispute on this matter. Mr. Taylor says that there was an arrangement that Egeness was going to get some of the stock when these payments were completed and that Mr. Taylor was under the impression that one reason for Mr. Egeness continuing to pay off this contract out of his own salary was that Mr. Egeness was to get part of the stock when the payments were completed.

Now, Mr. Forster, on cross-examination admitted that there was some such arrangement. He admitted

that there was an arrangement between himself and Mr. Egeness whereby Egeness was to have the right to get some stock and he in effect, as I recall it, said, that he was to get the stock when the payments to Mrs. Finstad were completed, but Mr. Forster says that understanding was arrived at after this method of paying off this contract by Mr. Egeness was set up in 1943, or whenever it was that they first went in there. And, they put Mr. Egeness back on the stand on rebuttal, and asked him two very carefully phrased questions: the first was whether he had at any time owned an interest in Finstad [5293] and Utgard. Of course, he had never owned an interest. The stock was held at all times by Mrs. Finstad until 1950, and as Mr. Forster testified, in 1950, when the stock was paid for, the investment had started, and they decided to hold up giving Egeness any stock until they saw how the whole thing was coming out. So, of course, Egeness never owned any part of Finstad and Utgard.

Now, the second question they asked him was whether he, in 1943, in the presence of Forster and Taylor, entered into an agreement to purchase one-fourth interest in Finstad and Utgard, or any interest, and he said "No."

Well, now, Mr. Forster's testimony was that his understanding with Egeness was not arrived at at a meeting where the three were present. He said, as I recall it, that he talked it over with Egeness, and he talked it over later with Mr. Taylor, and he reported back to Egeness again and that was Mr. Forster's testimony as to how this general arrange-

ment was reached, and that it was not done at a meeting at which all three were present, and which was the question asked Mr. Egeness here. Egeness in no way contradicted Forster's testimony that there was an [5294] arrangement whereby Egeness was to get some stock. The only direct conflict in the testimony is when the arrangement was made. This conference in Mr. Egeness's original testimony, the conference at which his salary was arrived at was July, 1943.

Forster had come into the picture and had made a verbal arrangement several months earlier than that, for the acquisition of this contractual interest in Finstad and Utgard, so that there was a several months' period before this salary arrangement was set up. There is nothing to show that this arrangement between Forster and Egeness wasn't made at that time, but even if it was made after that time, or made at any time before 1945, it still has a direct bearing on this case.

Now, further, there is this further factual situation to keep in mind. Mr. Egeness testified, truly, that his salary was $600, but he—and that tends to confirm his salary, and also tending to confirm it is the fact that he reported the entire salary in his return and paid all the tax on it. Mr. Egeness attempted to equivocate on this in his testimony. He first testified he paid only one-half and the corporation paid one-half, and then we confronted him with his sworn testimony in the preliminary hearing in this case, where he had testified under [5295] oath that he had paid all the tax, and he admitted on the

stand he paid all the tax, but he said the corporation reimbursed him for part of it.

The Finstad and Utgard books are in evidence here as Exhibits A-19 -20 -22 and -26, covering all of the years here involved, and those books—and we have checked them—show definitely that Finstad and Utgard Corporation did not bear any part of the tax on Mr. Egeness's $600 salary.

In each of the years, there are corporate checks written to the Collector of Internal Revenue for Mr. Egeness' tax, or a part of it, and those checks are charged to Mr. Egeness and paid for by him.

Mr. Egeness's testimony was not correct on that particular, and I want to come back to that at a later point in my argument.

Another significant thing here, Ladies and Gentlemen, is that Touche, Niven's analysis concerned Finstad and Utgard which was put in as an admission by Forster against his interest, but not binding on anyone else—it is Exhibit 251—Touche, Niven's analysis shows that Mrs. Finstad was overpaid by one thousand dollars, and to whom was the money repaid? It was repaid to Mr. Egeness. Now, if Mr. Egeness was not paying this contract out of his own funds, why [5296] would the one thousand dollars be repaid to him?

Now, where does all this complicated matter leave us taxwise? The Government says that this is some way taxable to Mr. Forster. They even put Mr. Holtberg on the stand as a certified public accountant who testified that this was a constructive dividend, and in cross-examination, I brought out that

he had taken the stand and so testified without ever checking the law on the subject whatsoever, and I think it is not excusable, Ladies and Gentlemen, for an expert witness in a criminal case, where the liberty of three men is involved, to take the stand and testify that something is taxable income without ever checking the law to see whether it is taxable income.

We offered an expert on the subject, Mr. Potts, experienced in tax law. He was not permitted to testify because the question is one of law, and not one of fact for the Jury, but we don't need an expert, Ladies and Gentlemen, for any ordinary taxpayer to know that there is a lot of doubt as to whether Mr. Forster was taxable in the years 1945 to 1949 on any income on this matter. Mr. Forster, as Holtberg told you, was on the cash basis. Most all individuals are on the cash basis, and on that basis, as you know, you don't report income until you receive it in your [5297] hands.

Now, the only person who actually received any money here was Mr. Egeness, and his salary was considered paid to him, and Mrs. Finstad received the checks, and they were paid on the stock and Mr. Forster received not one nickel in hand to be reported on a cash basis.

I say to you there was no taxable income on this matter in the years 1945 to 1949 whether there was an understanding between Forster and Egeness as to whether he was to get some of the stock or wasn't, and it was not until 1950, when the testimony shows that Mrs. Finstad was finally paid and

they delivered the stock to Mr. Forster and repaid Egeness only one thousand dollars, and didn't give him any of the stock that Mr. Forster himself says there was an understanding to give him at the time of this arrangement. They gave it all to Forster and yet the escrow instructions by which Mr. Croson, an attorney in this City, was holding that stock, shows that Egeness had the right to have that stock held until he was repaid every single penny out of his salary account or otherwise, but he did not get repayment except for one thousand dollars, and at that time, Mr. Forster had income, and got, on a cash basis, [5298] in hand the stock. Mr. Taylor was no longer there. It was in someone else's hands. I don't know how it was handled on those returns. Those returns are not in evidence here, but we say to you that the whole issue is improperly in this case, and I venture to say that sooner or later, when the Tax Court gets the civil side of this case, we will find Mr. Forster's attorneys up there arguing that it is not even taxable civilly to Mr. Forster in these years.

Now, another corporation that the Government contends paid income or from which income was received by Mr. Forster is the Renton Ice and Ice Cream Company and Forster did receive during these years, payments not from Renton Ice and Ice Cream Company but from Baskett and Schneider as part of the salary that they were receiving from that corporation.

Now, on this matter, there is agreement on certain fundamental facts. It is agreed that there was

a meeting of directors in September, 1952, shortly after this company was organized, and it is agreed —in fact, the minutes are here for you to see—that at that meeting, the salary of Mr. Baskett and Mr. Schneider, who were working full time running this business, were fixed at five hundred dollars a month. It is further agreed that at that meeting [5299] it was decided that Mr. Baskett and Mr. Schneider would each draw $200 currently month by month, and that they would get the balance at the end of the year.

Now, both Mr. Taylor and Mr. Schneider testified that Mr. Forster was there at the meeting. Forster says he doesn't recollect it. He wouldn't deny it. He doesn't recollect it, but he admits he was interested in the matter of what salaries were paid out of his companies, but he didn't recollect being at the meeting.

There is a very sharp divergence on two facts concerning that meeting on September 30, 1942. First, Taylor says it was agreed at that meeting between Schneider and Baskett and Forster that the balance of the salaries voted to Mr. Baskett and Mr. Schneider were at the end of the year to be divided three ways with Mr. Forster participating.

Now, interestingly enough, Schneider,—although he says he was at the meeting—denies that there was any discussion whatsoever about any division of those salaries, the amounts that weren't paid currently, and Mr. Forster also denied that there was any discussion, although, of course, he doesn't even recollect being there, so I assume has no [5300]

recollection of whether there was any discussion or wasn't any discussion.

The second point of diversion is that Mr. Taylor said at that meeting, when this matter was agreed upon, that he said that it was all right as long as Mr. Forster put his part into some books where it could be reported. He said to put them in his Alpine receipts where they would be reported because he said it shouldn't go on the return as a salary because it wasn't a salary, Renton Ice wasn't paying a salary to Forster. They were paying salaries to Baskett and Schneider.

What Mr. Forster was to receive was payment from the two individuals.

Mr. Taylor said it couldn't be set up on Mr. Forster's return as salary what should go in some place where it could be recorded and on the Alpine receipts, that was a logical place for it. The Alpine Dairy was a wholly owned proprietorship business, and if it went on there, it would be on his return.

Mr. Taylor tells you that that was what went on at that meeting. It was denied by Mr. Schneider and Mr. Forster, not recollecting being at the meeting simply denies anything said to him along that regard. [5301]

Now, what is the truth of this matter? Mr. Schneider would have you believe by his testimony that he and Mr. Baskett attended this meeting on September 30, 1942, and he says Forster was there, —they were all there—all the stockholders, Forster, Baskett and Schneider, and each owned one-third interest, and he would have you believe that there

was discussed the salary he should receive, and that he and Baskett would receive five hundred dollars a month each and that he came from that meeting, and Baskett came from that meeting, believing that each would get five hundred dollars a month, the entire amount of the voted salary.

He says there was no agreement that Forster was to get anything. And, Schneider, says that two years later, out of a clear blue sky, Mr. Taylor subsequently directs him to pay one-third of the balance of the salary voted to him and to Mr. Baskett to Mr. Forster. A big surprise. He had gone on for two years thinking he was going to get the whole salary, and now Mr. Taylor orders him to pay one-third of that to Mr. Forster, and he says he protested to Mr. Taylor. Apparently it didn't do any good. He went ahead and paid one-third to Mr. Forster, and he tells you he never asked Mr. Forster whether he had to do it, and [5302] never talked to him, one way or another, and on Taylor's order, he sends one-third of his salary to Mr. Forster and never peeping to Mr. Forster, never saying a word.

No two men, Ladies and Gentlemen, each owning one-third of this business, one of them the president and the general manager, who had attended a meeting of all the stockholders and at that meeting being voted five hundred dollars a month each, and it had gone on for two years, thinking it was their own money, would have paid half of the balance of their salary to Mr. Forster on the order of their fifty-dollars-a-month accountant, without asking Mr.

Forster "How come?". You know, as well as I do, that that was all agreed upon ahead of time, just as Mr. Taylor told you between those three people.

Mr. Forster says he was even surprised to get the money, all a surprise to him. He never heard about it. Just like manna from Heaven and the next time he sees Mr. Schneider, he says "Thank you," no other conversation, just "Thank you."

Mr. Schneider claims he was surprised every year when Mr. Taylor ordered him to give half his money to Mr. Forster, and he sent it and never discussed it with Mr. Forster. [5303]

Now, it is obvious that they are not telling you the truth about that, Ladies and Gentlemen, and the only story, the only statement here on this subject that jibes with what the facts had to be, was Mr. Taylor's testimony on the stand when he says at the very first meeting it was agreed between these three people that they were to handle it that way, and that his job was to reflect what they agreed.

After all, he was simply employed as the accountant, and he told Mr. Forster to put it in this Alpine receipts, so that it would be reported.

If Forster, then Schneider will take the stand and tell you a story as they did which is obviously not true, which is that they never agreed on this, isn't it just as likely that they would take the stand and deny that anything was said about putting this in the Alpine receipts?

Mrs. Lovenger, Mr. Baskett's widow, offers a refreshing contrast to this testimony of Schneider and Forster. She wasn't surprised. She never asked

Forster nor Schneider or Taylor about the split because her husband told her prior to his death, and she logically assumed it would go on as before. She assumed that this was agreed between the three stockholders at the very first meeting of this corporation. [5304]

Now, it is interesting, also, that when Taylor slipped up in August, 1945, and wrote checks for a 50/50 split with Forster, you will find, if you examine the Renton check register here, that the checks were cancelled, and Schneider took over and the system was changed, and single checks were written, as Mrs. Lovenger told you.

Schneider brought them out to get her to sign them, and took her down and got cashier's checks and sent the cashier's checks to Renton, and still he says, "Mr. Taylor ordered me. Mr. Forster didn't know anything about it."

But, Mrs. Lovenger tells you it was Schneider, not Forster, who was doing that.

Now, it is interesting also that Mr. Schneider erroneously testified on the very same point that Mr. Egeness erroneously testified on. Both Schneider and Egeness are connected with Forster, and I submit to you, in the light of all this, whether they can be classified as disinterested witnesses, particularly in view of the testimony of each of them, and the testimony of Schneider that is absolutely unbelievable.

Now, what was the point on which they both erroneously testified? The question of whether they paid [5305] taxes on their full salary. I have al-

ready covered Egeness. On Schneider: Schneider admits and he claimed he didn't pay the full tax on his whole salary, that Mr. Taylor took care of the other taxes, but he admits he included the full salary on his income tax return, so he had to pay the full salary, unless the corporation paid it, and the check register of the Renton Ice is in evidence, and we have examined it, and there isn't a single check written that could by any possibility, constitute a payment of Mr. Schneider's tax except withholding, and withholding, of course, is deductible from Mr. Schneider's salary before it was ever paid to him.

Now, the question may arise in your mind, Ladies and Gentlemen, as to why Taylor did not check to make sure that Forster was including this income in the Alpine receipts as he was told to do, but Taylor was not being employed to carry out his employer's income or to doubt his employer's word. He was employed to rely on the figure given him by his boss. He did ask each year, and it is admitted he did ask Forster each year for any other items of income that should go on the return, and there is no contention that at any time did Forster ever tell him that this income was not included in his business books and should be [5306] put on the return.

Forster was getting the money in hand paid by the checks. He knew if he received it, and it wasn't put in the books, he should have told Mr. Taylor about it, and Forster himself stated to Marx, as Marx testified, the very first time Marx talked to

him, in April, 1950, if all the items on his income did not get in his returns, Taylor was not responsible. He was simply making out returns from the figures Forster gave him. Maybe, if Taylor was very conscientious on this matter during these years, he would have checked further to see if these had gotten into these receipts, but he is charged here not with failure of conscientious checking, not with what he might have done, but with knowledge —what did he know—and there is certainly no evidence in this case on this point, as on all the other points in this case, that Taylor knew that that income wasn't being included in the Alpine sales and receipts—miscellaneous receipts — except Forster's own testimony on the stand against Mr. Taylor, and I say to you that here, as in every other place, Mr. Forster's testimony simply could not be believed, and when he will take the stand and say that these checks came to him as a great surprise and he said "Thank you" and never discussed them with anybody and never discussed them at any time, you can't [5307] believe what he says about that Renton situation whatsoever.

Now, the reason for this arrangement at Renton is clear in the testimony. It is undisputed that Forster wanted to keep in the background. He didn't appear in the corporation at all. He had Taylor act as his—as the front for him in this matter, and both Schneider and Forster testified that Williams, the man who sold it to them, and that they had to pay him for over a long period on contract, a man who was in a competing business there

in Renton, and didn't like Forster, and never would have entered into the transaction if he knew Forster was involved, and also Forster and Taylor told you that he had another competitive problem in that Renton area.

Perhaps their concern of these situations went too far. Maybe they didn't need to do what they did. Maybe the methods they used weren't appropriate for accomplishing what they were seeking to accomplish, as far as the public was concerned, or the competitor, or anyone else, but that was for the owners of the business, Mr. Schneider, Mr. Baskett, and Mr. Forster, not anyone else, to decide.

As they hit on this method, Mr. Taylor was employed as accountant. He had no interest in [5308] the business. His job was to reflect the decisions of the owners. He knew that Schneider and Baskett were paying tax on the entire salary voted and he assumed Mr. Forster was likewise paying tax on the amount Baskett and Schneider were paying to him.

Now, I should mention one other matter concerning Renton Ice and Ice Cream, although it has no direct bearing whatever in this case, and that is the charge made by Schneider that Taylor altered figures for the accounts payable at Renton for the end of the fiscal years 1946 and 1947.

It doesn't affect any of the tax here of either Mr. Forster or the Issaquah Creamery Company but nevertheless, the charge has been made.

Now, as to 1946, Schneider says he totalled the figures in these little books he, Schneider, kept; but

Mr. Taylor told you that after the first few months at the time he got out there, Schneider didn't have them filled out and Schneider was too negligent, and finally, from that time on, he had to get his accounts payable from the invoices and not the books but Schneider said, "Here are the books,'" and he got $8,338.05 as a total for this month, and he wrote it in, and later, at Taylor's instructions, he altered and raised it to $14,338.05. [5309]

Now, this is at the end of July, 1946. I wish you would look at that figure. The month—they have got the months wrong. The month will say "August, 1946," but that is the July month. There is absolutely no change or erasure of any kind in that figure, as Mr. Taylor pointed out to you when he testified. There has never been a change in that figure. It is in Schneider's writing, and it says $14,338.05.

Now, Mr. Taylor told you with regard to that, that he normally didn't use the book, and he went out there and was making an analysis of the types of accounts payable at this particular time, and he got all the figures together for beer, and mix, and retail, and down in the left-hand lower corner of that sheet, you will find where he jotted in mix, beer, and retail, the separate figures, and the total for $14,338.05, which Mr. Schneider wrote in his own figures above.

Taylor tells you that the month wasn't even complete, that the figures weren't all filled out. Schneider admits that Taylor derived the figures while Taylor was in the office, but he didn't know how he

got them. It is obvious, however, he got them from three separate categories of merchandise, and not by raising [5310] any existing total on the sheet as Mr. Schneider would have you think.

Now, as to July 31, 1947, Schneider says that he saw Taylor write in nine "1's." Taylor told you he did not write in those nine "1's".

In fact, Taylor tells you he didn't even see the book that month, and that that was the usual situation when he went out there.

Schneider says that the first total at the end of these columns is in Taylor's writing, but we called Revenue Agent Marx to the stand, and he certainly saw those, too. He spent long enough, as described by Mr. Griffin, going over all of these work sheets of Taylor's, for the years and years, and he found Mr. Taylor's writing, and he told you quite clear it was not Mr. Taylor's writing at the end of the 1947 accounts payable. In fact, the total at the end of the list is not a correct total of the pages of that month, whether it had the nine "1's" in or it did not have the nine "1's" in.

Where does that come from? The total is actually derived from three separate figures. Those three figures are accounts payable, accrued salaries and taxes payable. Those three total exactly the same as the end of this figure for the end of July [5311] 31, 1947, accounts payable.

As Mr. Taylor told you, he sent out a typed summary statement, as he did throughout all these businesses, out to Mr. Schneider at the end of the year, and it is quite possible that those three items were totalled in one figure in that typed statement, and

it seems probable to me that that is where that figure came from—that Mr. Schneider took it and entered it on the books.

Taxes, for example, never have been entered on those books, and yet you have to add in the amount of taxes written in at the end of the accounts payable.

Now, the remaining items that are put in issue in this case by the Government, as evidence of tax evasion consisted of interest received by Mr. Forster, which he failed to report. Forster and Taylor both agree that at the end of each year, Mr. Taylor asked Mr. Forster for the interest he had received during the year so that it could be put in his return.

Now, Mr. Forster at one point said that there was some information that he gave to Mr. Taylor at the end of each year that never got on the return, but when it was asked what it was, he was unable to point out one single thing.

Now, Taylor, when he asked his client for interest, and he is given a figure or figures for [5312] interest, certainly isn't required to doubt the word of his client, or to go around checking to see if there wasn't further interest given him. He is entitled to take the interest from Mr. Forster and put it in the return.

Forster knew what interest he was receiving, and if he didn't give it to Mr. Taylor at the end of the year, it is Mr. Forster's responsibility and not Mr. Taylor's.

Now, this constitutes, Ladies and Gentlemen, all the issues actually involved in this case. This con-

stitutes all of the charges of the Government which they say proves tax evasion in this case.

Mr. Griffin said to you this morning that all this failure to pay taxes arose from the mess in which Taylor's books were kept. But, let's think back over the issues that are really involved in the case, and see whether or not anyone of of them has anying to do with the way Mr. Taylor kept his books.

The diverted receipts that never got on the books, the personal expenses charged to business—they are simply charged on Erickson's journal as business expenses, and when they get to Mr. Taylor's books, they are in a lump sum figure for the various business expenses. [5313]

Certainly, on Mr. Taylor's ledger, it would make no difference, and wouldn't correct that situation. The year-end inventory, 1949, Mr. Erickson made it on his journals, and it is admitted here that Mr. Taylor merely took those figures and put them in his work sheet and then in his ledger.

On that, Mr. Griffin says this year-end 1949 adjustment was split up in his ledger. I think if you look in his accounts payable you will find that the total has been increased in one figure, and not split up all over the place. But, Mr. Griffin would have you think that the manner of keeping Mr. Taylor's books was responsible for this. It certainly wasn't responsible for the interest given him at the end of the year. That never went on the books. Certainly not responsible for Renton Ice. That was nothing to do with the books. It was not responsible for Finstad and Utgard if that were thought to be in-

come, which I say is not. Or, any other items.

All this business about the books is just a smoke screen to try to becloud the issues and they go into a lot of adjustments and the accountants admitted that any accountant in handling a general ledger must make a lot of adjustments at the end of the year and at other times, but they bring out these adjustments and make it to prejudice Mr. Taylor, [5314] if possible, and make it appear that here was a lot of manipulation.

They don't tell you that one adjustment here was balanced off by another adjustment there; that the cash on hand, which they say was understated from what they now figure how it was, is balanced off by the overstatement of the cash in the bank; that figures adjust themselves back and forth.

They don't tell you that; they don't tell you that in this period of 1949, and with 1948, also, there were large and complicated contracts taken with the Army, I believe, and certainly with the School Board, where Alpine took the contracts for milk but the contract was performed by four different dairies, Arden's, Kristoferson's, and Alpine, and Carnation. Alpine was selling the whole thing. The payments to the others were made from Issaquah, and that required a lot of adjustments, but all they want to do is to throw up a cloud of these things in an attempt to make it appear that there must be something some place wrong with these books, and that accounts for all this tax evasion here, and yet Mr. Gorans, on cross-examination, admitted that none of the alleged discrepancies that he was testi-

fying about, and he later said those weren't discrepancies because they may have been all O.K., [5315] he just couldn't understand them, he said none of them affect the issues raised in 279 and 280, which is the Government's statement of what they think proves this case for them.

Now, we are not certainly here contending that Mr. Taylor's books were models of excellence, that they were complete with all the posting references and descriptive material and so on with regard to what are in them and all of that. Mr. Taylor was performing work for the type of people who wanted the accounting done reasonably, and he had devised what he felt to be the simplest possible method of adequately reporting the income of his clients, and a method whereby a lot of things—I was going to call it "fancy stuff"—I shouldn't call it that—it is all very good—it is all very fine to have full posting references, but it takes time, and costs money—but he was performing a service that was much simplified, and we don't say that they are books that Touche, Niven would have kept, or someone else would have kept. We don't say there are not errors in them, in addition here and there, but what has that got to do with this case? This case is concerned with wilful and knowing tax evasion, and the Government has come out with particular charges here, and none of them have the least bit to do with all of these books that were [5316] testified about.

Mr. Griffin, on cross-examination of Mr. Taylor, went back twenty years to all of these accounting

statements where different figures were shown in statements given to a bank as compared to the books, and so forth.

They likewise have nothing to do with the case, and I don't have time to go into them in detail, but just as illustrative of the type of thing involved, I would like to take two of those exhibits and compare them, and before I do that, Mr. Griffin this morning spoke about exhibits A-99 and A-100, which were two of these financial statements back in the '30s, reading as of the same date. I believe it was at the end of 1938, and he says that one of them showed a deficit in cash, and another showed a deficit, I think, of thirteen hundred dollars in cash.

Well, neither of them showed anything like that. 99 and 100 both show cash on hand. Now, he is thinking of some other exhibit. I have forgotten myself which ones they were, where it was shown at the end of a particular year an overdraft in cash on the books, and when they made up a statement for the bank, what did they do? They took the checks that were in transit that had been written and not yet cleared at [5317] the bank, they took them out, and they actually had a bank balance at the end of the year in so many dollars, and on the books, they had charged off the checks they had written, which had not yet reached the bank. They took those out, and set them up as accounts payable, so that their cash didn't shown an overdraft but showed what was in the banks and the accounts payable showed the checks outstanding.

It was that type of an adjustment that we have through here, but Mr. Griffin, going back twenty years, would try to make you think it was something to do with this case.

Now, let's take, for example, Exhibits A-65 and A-95. They are both financial statements as of December 31, 1935. The first one was a statement given to the Peoples Bank, which at that time had a proprietorship interest in this company.

The second one was given to the bank at Stanwood, which was loaning money, and given to Mr. Beadon Hall, whose brother was president of the other bank.

The first statement shows a loss of $1,639.37, and the later statement shows a profit of $13,732. What is the difference between the two statements? In the first place, the second statement [5318] picked up $2,510.72 in additional sales on top of the 407,-000-odd sales in the first statement.

This small amount may be some money that came in at the end of the year, and hadn't been picked up in the original statement. Then there was an adjustment involving elimination of reserve for bad debts, which was carried in the books, and this resulted in an increase in the year-end inventory of $1,000 as a part of the adjustment, wiping out the reserve for bad debts.

Now, the reserve for bad debts is an allowable deduction for tax purposes, where you are carrying your bad debts on a reserve basis. But, for the purpose of the bank, these debts were still owed to this company, and they felt that it was proper to elimi-

nate the reserve for bad debts for that purpose.

Then, Mr. Taylor added that $6,900 of Forster's undrawn salary, so that the statement, issued for credit purposes, showed the true security that the bank would have in loaning money to that company, because the bank—it comes in ahead of the stockholders' withdrawals from the company, and, so, for credit purposes, what the bank wants to know is what would the—what are the assets that they could get if they foreclose on this company's [5319] business, and consequently the undrawn salary owed to Mr. Forster was taken out.

Now, next, Mr. Taylor made a $4,490 adjustment to depreciation. The depreciation on the books is the rate permitted by the Government.

The Government puts out a booklet showing depreciation rates, but the bank is not interested in book figures. The bank is interested in market values. What would those assets bring if they had to sell them at a foreclosure sale?

And, so, as Mr. Taylor told you on the stand, the depreciation and market value was changed to an appraised value, actual appraised value, of the assets.

Now, every other figure, Ladies and Gentlemen, on these two statements is exactly the same. These adjustments that are here made are as Mr. Taylor told you on the stand, a collection of various changes which present a true picture for credit purposes on the one hand, against the book figures, which are a true picture for tax purposes on the other hand.

Now, certain other items should be mentioned. In the Finstad and Utgard inventory and accounts payable, there were certain changes made. Now, the [5320] increase in accounts payable was due to bonuses which were owed to farmers for milk and it is admitted here that at the end of the year, there were bonuses owed to these farmers for milk that wasn't reflected in the books. When Mrs. Simonson prepared her statement from the books, showing her accounts payable, this liability was not in there, and it was a liability of the company. It should have been reflected in the statement if it was going to be an accurate reflection of that business.

Now, the amount was uncertain. It hadn't been computed at the end of the year, and in prior years, as you will find from the Finstad and Utgard ledger here, if you will look at it, the amount would actually run over ten thousand dollars, so that this figure was carried on as the estimated amount at the end of the year in accordance with the past history and it was based on actual liability that actually existed at the end of the year.

Now, the inventory changes Mr. Taylor testified were made by Mr. Egeness who actually took the inventory. Mr. Taylor wasn't there. He went up once a month, and in fact, none of these pencilled inventory figures on this sheet that was introduced in evidence here, A-44, I think it is—if you would like to look at it—appears in Mr. Egeness's [5321] own writing. All of this as to Finstad and Utgard, again, had nothing to do with the issues in this

case. The taxes of Finstad and Utgard aren't involved here. It doesn't result in any income to Forster or to Issaquah Creamery Company, and like so much of the rest of the evidence, it is brought in here simply in an attempt, if possible, to discredit Taylor, and to help make him the scapegoat of this tax evasion.

I am going on to another subject, your Honor.

The Court: Do you wish to recess, then?

Mr. LeSourd: Yes, sir.

The Court: Ladies and Gentlemen of the Jury:

We will now recess until tomorrow at ten o'clock. The Court calls your attention to the admonition given you on similar occasions, and asks that you heed it on this occasion. In particular, again, I caution you not to reach any conclusion relative to the merits of this case until it is finally submitted to you for your verdict.

You may now be excused until tomorrow morning at ten o'clock.

(Whereupon, the Jury retired from the courtroom.) [5322]

The Court: It is stipulated the Jury have left the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: Mr. LeSourd, do you expect to use your full time?

Mr. LeSourd: No, I expect to close beforehand. My estimate now is one-half to one hour in the morning.

The Court: I had this in mind.

Mr. Keesling, do you know about how much time you will take?

Mr. Keesling: At least two hours.

Mr. Moriarty: Mr. Griffin has one half-hour.

The Court: I understand.

Assuming we concluded with Mr. LeSourd and any response of Mr. Griffin that might be proper, it would leave the whole afternoon available, and if the Government might want to restrict to one-half a day, we might close Thursday.

Mr. Moriarty: Depending on Mr. Keesling's statement, I believe the Government can reasonably forecast it can be completed on the morning's session on Thursday. [5323]

The Court: Then we will give——

Mr. Moriarty: (Interposing) But there are startling differences——

Mr. Griffin: One development will be to reopen at the close of Mr. LeSourd's testimony because of the exclusion of the three major witnesses which we said to your Honor unless permitted so to testify that Mr. Taylor's would be the last word on the subject of financial statements and their purpose in showing the truth, the credit statements and the bonus payments, and I have listened to the last half of Mr. LeSourd's argument on Mr. Taylor's word on this.

As I say, the motion will be made.

The Court: This trial will be recessed until ten o'clock tomorrow morning, and this Court will take a short recess.

(Whereupon, at 4:02 o'clock p.m., May 11, 1954, recess was had in the within-entitled and numbered cause until ten o'clock a.m. May 12, 1954.) [5324]

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. LeSourd.

Mr. LeSourd: Thank you, your Honor.

Ladies and Gentlemen of the Jury:

I am told that inadvertently yesterday I mentioned one fact that was not correct, and I want to be sure that the facts that I do give you in my argument are correct, and I want to correct it at this time. I think I told you that Mr. Forster's salary during all of his period was eighteen to twenty-four thousand a year. I find that during a part of the 1930's, his salary was $10,500 and it went to eighteen and then to twenty-four thousand, and then back to eighteen, and I want to correct that.

It makes no difference in what I said. Any salary up in that figure together with his withdrawals were certainly sufficient not to have caused any [5329] suspicion on Mr. Taylor's part that the personal bank account that he had showed any withdrawals of income.

In that connection, I would like to say this, because of some perhaps wrong impression that one may get, particularly if not an accountant.

Much has been made here of these various net worth statements of Mr. Forster in the various years that were prepared from the books of these enterprises. I think Mr. Moriarty at one point in the examination asked questions about the totals in the net worth statements starting with 1945 and 1946 and so on, and the very large increases.

You should keep in mind that those net worth statements show the value of Mr. Forster's interest in these various separate corporations. That value increased very greatly during these years, but that was not taxable income to Mr. Forster. The income tax of that was paid by these corporations and it simply represents the increase of the value of the stock that he held in those companies, so that want to make sure you are clear on that, that that had nothing to do with Mr. Forster's own personal income, or his separate assets.

Now, there is one other matter that I would like to mention this morning, and a couple of other [5330] matters. One is the Denny Regrade property that was sold to Mr. Morris.

You will recall that Mr. Morris had sold the Daisy Ice Cream to Mr. Forster, and there was a note payable by Mr. Forster to Mr. Morris when this was sold.

Both Mr. Forster and Mr. Taylor testified that they remembered the sale price was $14,500. It appears in the testimony that there was $15,500 credit

on this note of Mr. Morris, and that there was a $15,500 receipt on this property which apparently was never delivered since the original was found in Mr. Taylor's files.

Now, Taylor says he believe that the sales price was $14,500 and that there was a $1,000 adjustment on the note.

The deed, however, apparently carried stamp taxes based on $15,500, but interestingly enough, in Mr. Taylor's own computation on the note, the stamp taxes are set out at a lesser amount, and Taylor did not buy or affix the stamp taxes on the deed.

Now, I don't know what the fact is, except that obviously there was confusion in the minds of Mr. Forster and Taylor as to what the price was. Mr. Griffin, I think, perhaps left the impression that the [5331] one thousand dollars never got to Mr. Forster, but there was a deposit shown in the evidence in account 198, his savings account, representing all the cash that was paid at the closing of the transaction after crediting the amount of Mr. Morris's note, and that accounted for all of this transaction, including the one thousand dollar adjustment, if there was an adjustment, and the $14,500, except for the five hundred dollar down payment, which was a separate item, and which Mr. Taylor said went to Mr. Forster separately.

Now, this transaction occurred in January or February, and the income tax return reflecting it, of course, was not filed until March 15th, of the following year, 12 or 13 months later.

The transaction was carefully set out in the income tax return in all details except that the amount was $14,500. Now, maybe there was a mistake. Maybe there was a one thousand dollar mistake. Maybe the price was $14,500 and there was an adjustment of one thousand dollars.

I don't know, but at least there was nothing in that transaction that would indicate any intent to evade taxes. And the most it would indicate is for some reason Mr. Taylor, and Mr. [5332] Forster also, had the impression that stuck with them that the price was $14,500 and that at most there would be a mistake of one thousand dollars, the same thing that was very carefully set out and reported on the return.

There is another point that I wish to revert to briefly. During Mr. Taylor's cross examination by Mr. Keesling, Mr. Keesling had identified five or six adding machine tapes of the kind given to Mr. Taylor at the end of the month. These had income taxes on them which had been paid by Alpine Dairy —these were Alpine Dairy tapes—on Mr. Forster's personal income tax, and Mr. Keesling sought to show that the account numbers written besides these amounts were business accounts for the business taxes of Alpine Dairy, 32 and by an account 33, I think, but the tapes show that written in English language besides these amounts are the words "Income Taxes," and Mr. Taylor told you that each of these items had a descriptive word and that is what he went by, and as Mr. Forster's income taxes, they were chargeable to his proprietorship account,

where they were charged on Mr. Taylor's ledger.

There was nothing in there to indicate to Mr. Taylor, of course, that there were large amounts [5333] of personal items of Mr. Forster buried in the plant expense and advertising and in the other business expense items.

While discussing particular issues in this case, I pointed out a large number of discrepancies and contradictions in the testimony of Mr. Forster and Mr. Erickson that we submit indicate that their testimony against Mr. Taylor is not credible, and there are others which I haven't previously mentioned.

For instance, Mr. Forster's testimony that he never instructed his bookkeeping staff with regard to any entries in the books is directly contradicted by Miss Neukirchen's testimony that if Erickson wasn't there, she would ask Mr. Forster where to post matters in the books.

Also, directly contradicting Forster's testimony in that regard is Miss Neukirchen's testimony that Forster instructed her not to record the ice cream sales and the sales of mix at Renton, and instructed her to keep the invoices and give them to him. Moreover, with regard to Daisy Ice Cream, you will recall Forster said he thought Taylor was the one handling the books, and he didn't learn anything to the contrary until after the investigation started and yet later he admitted that he had Erickson make out [5334] profit and loss statements for Daisy and Alpine for year after year during this period.

On the Government's cross-examination, Forster testified that he had discussed with Taylor the matter of his daughter's continuing on the payroll while she was in Europe and yet there was read to you Mr. Forster's sworn statement to the Agents that he did not discuss this with Taylor. Direct contradiction.

And with regard to Mr. Erickson, I must say to you Ladies and Gentlemen that I have a great sympathy for Mr. Erickson and I think every one of you do, too. He had a large family to support and he had to have a continuous job, and he had to keep that job.

He was, and he obviously still is, under the domination of Forster, and one can only think that everything he did in this case was under the direct order of Mr. Forster, and he had to keep his job, and he still is indebted to Mr. Forster, and he still has the problem of keeping a job and supporting his family when he leaves here, no matter what happens to him, but that, Ladies and Gentlemen, may explain why he would take the stand, but it does not excuse why he would take the stand and obviously not tell you the truth. He, too, has contradicted himself and contradicted it on previous testimony. [5335] I mentioned some items before, and there are others. He testified here that the girls in the office were not working under his direction, and yet all three of them, Audrey Favini, Caroline Neukirchen, and Helen Krall, all took the stand and told you they worked under Erickson and under Erickson's instructions.

Mr. Eppler testified that Erickson himself had told Mr. Eppler that he was in charge of the office and gave the instructions to the girl, and in this connection, Mr. Erickson testified as to a lot of checks coming in. He said that he gave them to the girls to post in the ordinary course of business, and he said he didn't know why they were not posted, and he did not know why they ended up in Forster's savings account.

For example, the Finstad and Utgard checks, he said they were given to Miss Neukirchen to post to accounts receivable, and to deposit in the company account, and he said he didn't know why she would have put them on Forster's desk, and the Stephenson butter checks, he said he placed them on the counter, and the girl picked them up and he said she should have posted them.

He said he had nothing to do with the [5336] posting of accounts receivable, and that he gave no instructions, and that he wasn't necessarily in charge of the entries in the sales record, and yet there was read to you Erickson's sworn statements to the Agents, and he told the agents that the recording of receipts was under his supervision and no one else had authority over recording of business receipts except himself, and Miss Neukirchen testified that the only reason that the Stephenson checks would not have been recorded would be that she had not received them, and she gave the same testimony on the casein sales, and Miss Neukirchen told you that she got instructions from both Forster and Erickson not to post the charge slips to ac-

counts receivable and to hold out the cash sales.

And, again, with regard to Daisy, Erickson testified that he didn't know why the Daisy cash sales were not recorded on the Issaquah books. Miss Neukirchen testified that she withheld those Daisy cash slips on Mr. Erickson's instruction, and Erickson's statements to the Agent, as read to you, were that he charged the personal expenses to business expense because there was no other provision on the books for charging personal items to Mr. Forster.

But, when it became apparent here that there was provision on the books for such charges, it [5337] also became apparent that Erickson himself had made such charges previously, and he shifted his ground and testified that the reason he charged personal expenses to business expense was that it didn't make any difference to him whether the item was business or was personal, it was all Hans's business, all Hans's business, so he charged the item to the same account that he would have charged the business expense to.

Similarly, as to business receipts coming into Issaquah, which were put into account 198, Erickson said to the Agent that he had no place on his books for these items, but at this trial when it became apparent that there was a place on the books, then he shifted again and said that some of the checks didn't belong to Issaquah at all, and as to the others it was simply the simplest way of disposing of them.

No one, I submit, who had heard his testimony and heard these contradictions—knew and so heard

that testimony without knowing that he was not telling the truth and the whole truth and was making effort to protect Mr. Forster.

It is reasonable then to conclude that his testimony against Taylor is likewise suspect in view of the campaign that Forster has made to throw the blame in this case onto Mr. Taylor. [5338]

Many strange situations are testified to in this case, all resulting in income to Mr. Forster, and the receipt of this income is always a great surprise to Mr. Forster. People are busy getting business receipts into his hands without recording them, splitting their salary checks with him, charging his personal expenses to business expense, reducing by fifty thousand dollars his taxable income after he raised a fuss about it; all, we are told, on their own initiative, without being asked, without telling Forster, and it is all a great surprise to Mr. Forster.

Christmas came every day at Issaquah. One would almost think that Mr. Forster would be a very retiring and bashful man, unused to business affairs, who never did understand how money was earned, or how it came to people, or whether he earned any money at all in a particular year.

Instead, we find him to be a very dominant character, a profuse and glib talker, and a man who could and did compute a profit and loss statement each month in his head.

In the business world, large amounts of income just don't happen. Large checks don't just come to you out of the sky like manna from Heaven. Your

employes on their own initiative don't alter books, and risk a [5339] term in the penitentiary just to save you taxes because you are a wonderful guy, and they further do these things without telling you so that you will be agreeably surprised how wealthy you become. People just don't do things that way.

Now, the explanation of all these facts that makes any sense at all was that Forster was ordering and directing that these things be done. He ordered Miss Neukirchen and Erickson to give him the checks, and cash without recording them. He ordered Erickson to charge personal expenses to business expense, and to reduce profit at the end of the year 1949 and he arranged with Baskett and Schneider to get part of their salary checks.

It has been claimed that Mr. Taylor was the master mind in all this. I submit to you that the master mind was none other than the same master mind that built up in a few years a large business chain from nothing, and that could compute profit and loss in his own head, and when we talk about friendship and trust and reliance on an accountant, let us think about the obligation of a business man and taxpayer to give his accountant fully and completely all information for his returns, and to see to it that every item of income is entered [5340] on his books, so that when the accountant takes the figures from the books, relying thereon, he will have received correct and complete figures.

And then, when we speak of friendship and trust, let us think also of the obligation of this business-

man and taxpayer to take the stand and tell the truth when his unreported income has brought not only himself but his employes as well to trial, to tell the truth so that those who have served him for years at ordinary if not low compensation can be judged on the basis of the facts as they actually existed.

Now we recognize, Ladies and Gentlemen, that the worst thing here as far as Mr. Taylor is concerned is not the evidence in this case but the fact that he had previously plead guilty to tax evasion in his own case but we say to you that if there is anything that we in this Country stand for it is that everyone is entitled to fair play, even those who have erred previously and who are weak and down trod, they also as well as the successful and rich and powerful have the right to be judged impartially on the facts in the case.

Now, on his own return, Mr. Taylor although he felt in his own heart that he had not intentionally evaded [5341] taxes, pled guilty on the advice that he was responsible, that as an accountant he had no defense. He stood up like a man and paid for his mistake. He did not deny the facts relating to his own situation and there is nothing in his plea of guilty to indicate that when he is testifying under oath he would do other than to state the facts truthfully and correctly as they occurred. In fact, his testimony in this case, as you saw, Ladies and Gentlemen, was direct and it was frank.

Mr. Griffin said something about character witnesses, about one character witness being asked

about reputation during the period 1945 to 1949. Of course, that is what we asked him. That is the period when it is charged these events took place. Mr. Griffin forgets that his own associate, Mr. Brody, asked Forster's character witnesses precisely the same question, and as Malcolm McLaren, a labor leader and civic leader in this City told you, Mr. Taylor's plea of guilty in his own case has not changed his opinion as to Taylor's truthfulness and veracity. Just because Taylor pled guilty in his own case doesn't justify his being made the scapegoat for someone else's tax delinquencies. The very fact he had this prior trouble makes it imperative [5342] that you Members of the Jury carefully examine the evidence and the credibility of witnesses in this case because of the vulnerability of a person in his situation being charged with another's troubles and this responsibility that you as jurors bear is particularly emphasized in this case by the fact that Forster's defense has not been a frank, straight answering of the Government's charges but has consisted almost entirely of an attack on Mr. Taylor, on matters having nothing to do whatsoever with the Government's charges.

These are the tactics, of course, that a person would employ if he were improperly seeking to blame another for his troubles. He would avoid talking about the actual issues and would concentrate on discrediting his victim and that is exactly the line that Forster's defense has taken here.

Moreover, it is evident from the testimony that this defense of blaming Taylor is based not on a

conscientious consideration of what actually happened but on the fact that Taylor was vulnerable, a person on whom the blame could be thrown.

April 16, 1950, it had its inception at a time when the investigation of Forster had not yet started and it was not known anything was wrong [5343] with the Forster returns. In the very first meeting with the Agents on this Forster case on April 26, 1950, Mr. Kachlein, who was attorney for both Forster and Taylor, stated to Revenue Agent Marx that if there were any errors in the Forster returns it was undoubtedly due to the sloppy accounting of Taylor. Now, Kachlein says he doesn't remember this but he does not deny it and Marx in so testifying was testifying from a written memorandum made at the time. By Mr. Kachlein's own admission he did not then know that there was anything wrong with Forster's returns. Why then would he suggest to the Agents that another client of his, Mr. Taylor, was responsible for any shortages if they were found? Obviously at that point he did not know truthfully who might actually be responsible for the shortages if they were found. The only possible reason for this statement was to lay the ground work for shifting the responsibility for any shortage that might develop—shifting the responsibility from Forster to Taylor—irrespective of the actual responsibility that might be developed by the facts.

Mr. Kachlein admits that on August 29, 1950, when from Mr. Eppler's entry into the case he knew there was a question of fraud involved he [5344] nevertheless told the heads of the Internal Revenue

Office here in Seattle that the substantial deficiency shown by the Touche-Niven reports was all due to the faulty, sloppy, poor accounting work of Taylor and told them that Mr. Taylor had the responsibility of looking after all of Mr. Forster's books and all the finances of Mr. Forster's enterprises and yet, even at this time, Mr. Kachlein, according to his own testimony, did not know the details of the possible deficiencies as to whose fault it was. He says he didn't know that until the end of October, 1950. I wonder with the evidence in this case on just what he did base his conclusions even then.

Now, again, these statements to the Agents indicated a plan and purpose of basing the defense of Forster on an attempt to shift the blame to Taylor irrespective of the actual facts of the case. Now, furthermore, Mr. Kachlein, during all this period when he was making these statements, was actively representing Mr. Taylor as his attorney. He at no time advised Taylor that he was taking a position that Taylor was to blame for Forster's tax deficiencies, and, furthermore, after a phone call from Forster he blocked the circulation of a petition which would have strengthened Mr. Taylor [5345] before the Accounting Board.

Now, I say to you that all of this was a very unfair procedure with a lawyer to take with his own client, that it was extremely unfair for a lawyer who has persuaded his client to plead guilty to a criminal charge to turn right around and use that very guilty plea as a basis for making him the scapegoat for another's tax deficiencies.

Now, if Mr. Forster and Mr. Kachlein had had confidence that the facts as they developed would exonerate Mr. Forster then there would have been no reason for treating Taylor unfairly; there would have been no reason for Kachlein to blame Taylor on the one hand while still representing him on the other and at a time before Kachlein knew what the facts were; there would have been no reason to prevent Taylor's clients from expressing their confidence in him; there would have been no reason to encourage Taylor to leave town for a month in September, 1950, without telling him that the lawyer he trusted and still relied on was actively working against him; there would have been no reason to leave Taylor, in practical effect, without an attorney's protecting his interest during the first six months of the investigation in this case. [5346]

If Mr. Kachlein, on April 26, 1950, realized as he should have the conflict involved in blaming Mr. Taylor for Mr. Forster's troubles, blaming the man who is now in prison and who is most vulnerable because of Mr. Kachlein's own advice, if he had even notified Mr. Taylor at that time so that Mr. Taylor could have employed other counsel Taylor might be in a much better position today to defend himself against the attack by Forster because on April 26, 1950, Taylor's files were still complete as he left them at Issaquah. By October 27, 1950, they had been taken apart and scattered and never again would get into a condition where all of the papers relating to various transactions could be put together.

The fact that all of this was done before the facts shown by the investigation had been uncovered is evidence that Forster and Kachlein did not have confidence in the truth of Forster's position and desired to plant in the Agents' minds at the very outset the idea that Taylor was the man responsible.

Now, these representations against Taylor and the statements by Forster against Taylor which followed them all occurred before any recommendation of prosecution was made by the Government [5347] Agents in this case. And what were the Government Agents to do? Here was not only Forster but Taylor's own prior attorney saying that Taylor was responsible. Their only course, as conscientious public servants, was to indict both of them along with Mr. Erickson and let you, the jury, decide who was to blame and that is now your responsibility, Ladies and Gentlemen.

To have pled guilty in his own case and gone to prison was not easy on Mr. Taylor, particularly where he insisted that there was no intent to evade, but he was told for an accountant there was no defense. You saw tragically while he was on the stand the genuine anguish of a man required to relive that episode. Nor was it easy for Mr. Taylor to learn that the very day after the prison doors closed on him his trusted attorney on whom he had implicitly relied and on whose advice he had pled guilty was imputing to him the blame for someone else's tax deficiencies, an imputation obviously based on the very plea of guilty which that attorney had recommended.

Now, I am asking you to re-examine Mr. Taylor's own case. Whether what happened was right or wrong it is not your burden to decide and [5348] it is not an issue here but I am asking you not to punish Taylor twice for the same matter. I am asking you to determine the case before you on its own merits, without prejudice from what happened before. You have only this case before you and I am asking that justice be done in it on the facts which apply to it and it alone.

The Court will instruct you that Mr. Taylor is not guilty in this case unless you find beyond any reasonable doubt that he knew there was not included in these returns income which was required to be included and that he personally and with an evil motive intended to evade taxes thereon when he filed those returns, and the only evidence, Ladies and Gentlemen, in this case that would serve to show such intent by Mr. Taylor is the unsupported oral testimony of Forster and Erickson and under all the circumstances here we say to you that their testimony against Mr. Taylor can not be believed and it certainly can not be believed beyond any reasonable doubt. As conscientious citizens interested in fair play and considering the evidence in this case your verdict as to Mr. Taylor should be not guilty.

Thank you. [5349]

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Mr. Griffin: The Defendant Forster at this time moves that the cause be reopened for the taking of additional testimony, and the introduction and the

offer again of exhibits A-121 and A-121-A; that because of the argument primarily made by Mr. LeSourd in regard to minus inventory, and the purpose of that exhibit as well as the offer of Exhibit 120 was to meet that particular argument, and with those exhibits in evidence, the argument would fall of its own weight. It leaves the case, as far as the Jury is concerned, with Mr. Taylor's statement as to minus inventory when he carried the minus inventory over from 1949 into 1950, and showed it only by a hyphen mark on Exhibit A-121-A, and in exhibit A-121 [5367] he didn't show it at all on a profit and loss statement. You had to deduce it by a matter of addition and subtraction.

The Court refused the testimony on rebuttal to the testimony of Mr. Taylor by Mr. Egeness, and that rebuttal testimony was to meet the testimony of Mr. Taylor specifically in regard to Finstad and Utgard—Mr. Egeness—and it left the testimony of Mr. Taylor then open, unimpeached, and the argument was therefore made on Mr. Taylor's behalf by Mr. LeSourd as to the Finstad and Utgard situation, and the Egeness situation in the purchase and sale and the salary checks and payment of taxes.

The Court refused the testimony on rebuttal of Mr. Ellis, the credit manager, of Peoples National Bank, of Mr. Strack and Mr. Donaldson, as to the purpose and effect of a financial statement, what the credit department desired, and what was represented to them, leaving the testimony of Mr. Taylor unimpeached, as to what the credit department wanted, and the purpose of making of credit profit

and loss balance sheets for the credit at a bank, which was used and unimpeached, Mr. Taylor's testimony standing alone in that particular. Mr. Egeness's testimony also going to the matter of the bonus payments, and Mr. [5368] LeSourd argued to the Jury that the $10,000 was properly allocated, when the rebuttal testimony of Mr. Egeness would show that the bonus payments were limited to those on the statement and there was a differential of between seventy-five hundred and eight thousand dollars, however, leaving Mr. Taylor's counsel free to argue that the ten thousand dollars was properly allocated under the evidence of Mr. Taylor.

Will your Honor excuse me just a moment?

(Whereupon, there was a brief pause.)

Mr. Griffin: (Continuing) The Court did not permit the testimony of Mr. Egeness in impeachment of Mr. Taylor as to Exhibit A-44, Mr. Taylor having testified that three changes in that document were made by Mr. Egeness, and the specific question asked of Mr. Egeness was refused by the Court, and we deem that those matters were vital in the defense of Mr. Forster as against Mr. Taylor's claim, and would affect the over-all defense of Mr. Forster as to the Government's claim.

I think that completes it, if the Court please.

The Court: Any comment of other counsel?

Mr. LeSourd: We object, of course, on [5369] the same grounds before, on the grounds it was not timely offered.

Mr. Moriarty: The Government objects on the same grounds.

The Court: Motion will be denied. [5370]

* * * * *

Mr. Moriarty: May it please the Court, Ladies and Gentlemen of the Jury:

It has been called to my attention that during the argument, that I made a statement that Mr. Griffin had cross-examined Mr. Eppler for a period of seven days. I wish to withdraw that statement, because it is not the fact. Mr. Griffin did examine him on parts of two days, and completed his examination, but Mr. Eppler was here for a given number of days and if I may be guilty of any misstatement, it is by the tender mercies of inaccuracy of memory. I do not intentionally make any misstatement of fact.

Mr. Griffin in his argument has accused me of stating that there were some "characters" who testified, and my designation offended him. I am afraid Mr. Griffin has not been in contact with the dictionary for some time, for that states an individual possessing a combination of distinctive features of high worth and moral force and also one of resolution.

He also indicated we were endeavoring to convict a rich man only because he was a rich man. [5491]

The United States Attorney herewith serves notice on Mr. Griffin, upon every individual in the district, that any one who violates the law, be he rich, be he powerful, or high placed, is not above the law or beyond it.

We heard much about the suggestions and the gift of imagination that Mr. Eppler and the United

States Attorney possess. We were warned about the Police State; we were told in Mr. Griffin's argument that every item of personal expense was charged to business expense on the books. There were many places that those personal expenses were found, in supplies, advertising, plant expense, and so on, and they couldn't be found unless somebody went out looking for them, and they weren't found for many years by a revenue agent and it took about six months for their own accountants to finally get it together, but a strange thing appeared in the evidence and I hope my memory serves me right, that when Mr. Eppler asked Mr. Erickson for a list of those expenses when he was under investigation, it was promptly and quickly complied with.

We were told about the two dollar Community Fund check and we were given the five facets. The Time Oil Company was explained by Mr. Griffin's [5492] imagination as used to prevent other oil companies knowing that the Time Oil Company was doing something unethical. We are not interested in that, but ask the Jury to consider how the other Oil Companies could check the books of the Issaquah Creamery Company if such had been recorded on the books of the Issaquah Creamery Company, and the Issaquah Creamery Company would not let them check the books.

We heard again and again that every check in the journal was recorded, and every check was in the journal, but something had been done to detour it to something that wasn't Mr. Forster.

We heard about Account 198 being available to

Mrs. Forster, but at the time she wanted the Cadillac Automobile, she didn't go to 198. She went down to Mr. Erickson while Mr. Forster was in Switzerland, and Mr. Erickson graciously complied with it, and if that is not the best evidence of a plan, I don't know of any other. "Charge everything on the books, but charge nothing to me." Those were the orders, and they were slavishly complied with. Every check was entered in the journal, but somehow charged to something else but Mr. Forster.

Mr. Forster eliminating his competitors and putting them out of their misery was confusing himself [5493] by mixing up in account 198 funds that belonged to the Hans Forster Transportation Company, the Issaquah Creamery Company, and Alpine and Apex.

Then, Mr. Griffin recited all of the witnesses for the Government, including Carline Neukirchen, and he dramatically read to you one instruction about the selection of an accountant.

I ask you to pay close attention to the instructions of the Court upon that feature. Dramatically Mr. Griffin made a demonstration about his chair, and dogmatically announced that you couldn't make a chair disappear. Therefore, minus inventory was eliminated.

I say to Mr. Griffin, if you really wanted to juggle books, you could have a minus chair just as easily as you could have minus cash, if that was part of a plan, to defraud the Government. Magnificent words were used about taxes and military taxes, and Hans

Forster dealing with himself, and Mrs. Wilcox carefully keeping the cash. Remember they had a cute deal. Down in Seattle was where they took it in and very carefully, and it was only in the little world at Issaquah that it was diverted, and where there were two people all the time, every day, Hans Forster and Harold Erickson. [5494]

Then Mr. Griffin went into a dramatic charge, answering only one of the questions that I addressed in the opening argument, and that was about Mr. Jones. Mr. Griffin reminds me that Mr. Jones was a witness subpoenaed by the Government.

That did not keep Mr. Griffin from bringing back every witness that he wanted to that was subpoenaed by the Government, and that explanation of failing to call Mr. Jones falls flat on its face.

Then, in his argument, Mr. Griffin began to Taylorize the defense, and he charged Taylor with the duties of a memory expert, when we can only charge him with the ability of a Houdini.

It was a Taylor-made defense. He had proved the Government's case, and then he criticized that Mr. Gorans had not been inquired into further. We ended the Government's case in chief on March 16, 1954. We are still in the trial and we have been listening mostly to minus explanations of fog and inaccuracies of Mr. Taylor's bookkeeping accounts. I want the Jury to well remember that the Government bases its case principally on the items that never saw the books, on the checks that were written, falsely entered as business expense, and no matter how many internal safeguards, or how much the

Touche, [5495] Niven, Bailey and Smart accountants could set up, if somebody detoured with the money they couldn't have any record of it any more than Hicks Taylor could have.

In the closing of Mr. Griffin's argument, he closed that session on an afternoon with the explanation about Taylor and about the barn, and that Taylor should have known about the barn. It was apparent that Mr. Griffin expected that Mr. Taylor—not Mr. Forster—was expected to milk the cows, clean out the barn, rent the farm, and collect the rent, and know everything about it, including income tax, only having been there once at the barn dance.

Apply the same measure of expectation of recollection to Mr. Forster. We heard again a suggestion about a Swiss Cheese deposit in a sarcastic way. I am not unwilling to answer the explanation and inquire of the Jury whether it is not possible under this evidence to think that in some parts of Switzerland, there may be some deposits not in rolls of Swiss Cheese, but in Swiss deposit boxes.

Then we heard of Erickson's great limitations. Forster carries the matter here. I am willing to answer that part of Mr. Griffin's argument. He carried it well, and he carried it [5496] without the assitance of any books, and unless somebody was watching him every minute, nobody could tell how much money he had at any time. Mr. Griffin said he was calling no names, and to pay no attention to the accountants, and Mr. Gorans, who has remained here, through the arguments, at sixty dollars per day, for the sole purpose of giving Mr. Griffin the

memorandum he carefully read with difficulty—distraction for seventy thousand dollars and a slight memorandum.

The Government is charged with attempting to aid Taylor. I know by this time in this argument that that argument has disappeared.

Mr. Griffin then spoke about Bill Allen at Boeing's who never saw the books, but I pose this question:

If the bookkeeping department at Boeing's put a check for the sale of supposedly 29 cents on Bill Allen's at Boeing's, or Bill Street's at Frederick & Nelson's a check for used furniture, we don't think either one would put the check in their personal savings account and loan it back to Frederick & Nelson's or Boeing's at six per cent.

Mr. Griffin suggested you take a paper and pencil for the proper showing of forty thousand and fifty thousand dollar shift from Issaquah Creamery [5497] Company to the individual ownership of Alpine Dairy in 1948 and 1949. He has pointed out that the corporate tax for both years was 38 percent and on ninety thousand, the total for both years, which he admits the corporation did not pay.

He failed to point out, however, that in 1948 that more than 56,000 was omitted from Alpine, and Mr. Forster's personal tax returns, so that instead of paying 59 percent or 21 percent more tax on the fifty thousand dollars, he didn't pay a cent on it, either personally or in the form of corporate tax, and that in 1949, the evidence shows that more than $79,000 was omitted from Mr. Forster's personal

tax returns, so that instead of paying 65 percent or 27 percent more on the forty thousand dollars, he didn't pay a cent on that tax, either, and that actually the full ninety thousand dollars was taxable to the corporation as well as taxable to Hans Forster personally and neither paid one penny on it.

To keep within the limitations of my time, I leave Mr. Griffin's argument for the moment.

Mr. Keesling in his defense of Mr. Erickson has adopted a rather unique approach, and I said in my opening that he had taken Mr. Griffin's advice and he was pounding the other lawyer. So, if my [5498] memory serves me correctly, Mr. Keesling described to you the reasons why these people could not be tax evaders.

I will try to recall them.

(1) There must be an intentional failure to maintain any financial records whatever.

(2) That the tax evader must have frequently visited safety deposit boxes at least under an assumed name.

(3) The tax evader must deal in large sums of currency, never in checks.

(4) The tax evader must purchase property under assumed names.

(5) The tax evader must be a racketeer.

(6) The tax evader must not be able to pay the taxes when apprehended. He must have lost the money at the race track or by some other means. Mr. Keesling has been reading too many detective stories. What he described to you is not the defense of tax evasion as described in the Code, but the

perfect crime of tax evasion. He tells you, in effect, that a crime, in order to [5499] be a crime, must be a perfect crime.

Now, the Court will instruct you concerning the elements of the crime of tax evasion, and in all due deference to Mr. Keesling, I am confident that the Court's charge will not include any of the elements mentioned by Mr. Keesling.

However, for a moment, I would like to discuss these elements and see whether they might be applicable to this case in view of the question asked me whether it is possible to explain why the Government's proof fails to measure up to Mr. Keesling's specifications.

First, Mr. Keesling says there must be an intentional failure to maintain any records. I must confess there are records in this case. However, attached to Exhibit 238, is a list of over $100,000 of business receipts received by the Issaquah Creamery Company and not recorded on the books of that corporation that are in evidence. There are other entries concerning these receipts in the books of the corporation. There is evidence that Hans Forster conducted large scale business known as the Daisy Ice Cream Company. Few, if any, records of this corporation have been found. Therefore, I submit, at least we have partially satisfied [5500] the first of Mr. Keesling's requirements.

Second, Mr. Keesling tells us that there must be a frequently visited safety deposit box rented under an assumed name.

Now, there are many banks in the State of Wash-

ington. There are many more banks in the United States, and there are banks, in fact, in foreign countries. It is probable that there are considerable numbers of banks even in the small country of Switzerland. There are also assumed names without end which a person might use. There may be several safety deposit boxes kept under assumed names in this case, but the Government must admit that if there are, we have been unable to locate them, so I guess we must admit failure to satisfy Mr. Keesling's second requirement.

Third, Mr. Keesling suggests that there must be use of large sums of currency. If you will examine 198, you will find many thousands of dollars of currency deposited in that account. You will recall the testimony of Caroline Neukirchen of the currency collected from the drivers, and Mr. Green's Time Oil payments, were made in currency, so that I believe we can satisfy Mr. Keesling's requirements on that part. [5501]

Fourth, there must be purchase of property under an assumed name. Presumably a person who has no desire to own property could not qualify as a tax evader. As in the case of safety deposit boxes under assumed names, the Government must confess its inability to locate property which Hans Forster acquired under assumed names.

This does not, of course, mean that such property does not exist.

However, we have located and have put in evidence $300 a month paid to Mary Finstad on Hans Forster's account which was carried on the books

of Finstad and Utgard under the name of Verne Egeness. We have sums of money paid to Hans Forster from the Renton Ice and Ice Cream Company carried under the names of Maizie Baskett and R. L. Schneider. We have sums of money paid to Mr. Forster by Simonson and Forster, carried under the name "equipment" but I do not suppose these facts satisfy Mr. Keesling's requirements.

Mr. Keesling says that the taxpayer must be a racketeer. What constitutes a racketeer depends upon one's definition of the term. It is what racket one is in. I do not believe we could call Mr. Forster a racketeer. Unfortunately, there are not [5502] enough racketeers in America to support the Government by taxes. Moreover, as I have read the newspapers, and I have, the racketeers are very poor taxpayers, so the Government has found it necessary to collect taxes from people other than racketeers.

Sixth, Mr. Keesling tells you that in order to qualify as a tax evader, a person must be able to pay the proper amount of taxes due when the fraud is discovered. This would make the Court and Jury some sort of a collection agency. All an individual would have to do when discovered in wrongdoing would be to say "I will pay up". Presumably the individual who robs a bank and being captured could be completely exonerated by offering to return the funds which he has stolen from the bank, —and these funds were stolen from your Government. Such is not the law.

The Court will tell you that this is a criminal

case, and whether Mr. Forster has paid or will pay, or can pay, taxes due in this case is no concern to the Jury. The people who can pay their tax liabilities when discovered, and the people who for various reasons find it impossible to pay these taxes, stand on exactly the same footing.

Mr. Keesling has told you that Mr. *Keesling* made out checks in question in accordance with the bills received and determined the account, whether the [5503] check should be drawn on the Alpine or the Issaquah account.

Now, I ask you for a complete answer to that statement to look at Exhibit 64, the cancelled checks in the amount of $5,744.22, payable to the Puget Sound Products Company in payment, if we are to believe the books, for the purchase of butter. Examine these exhibits and you will find no bill from the Puget Sound Products Company. You will perhaps recall the testimony of Mr. Goss, the vice-president of the company. Mr. Goss told you that the Puget Sound Products Company did not sell butter, that he had never received a check, and that the endorsement on the back he couldn't recognize, and the Issaquah Creamery Company never owed Puget Sound Products Company any money. That is what Mr. Erickson did on one cold occasion of handing to 198 $5,744.22 of taxfree money and a deduction on top of it.

Mr. Keesling has commented at some length that neither Harold Erickson nor L. Hicks Taylor would state he did what he did because Forster directed him to do it. He tells us that if they had willingly

made that statement, they would have been completely exculpated from wrongdoing. The fact is that had either Taylor or Erickson made such a statement, it [5504] would have been tantamount to admitting they were guilty of aiding and abetting Hans Forster in his tax evasion. It would be refreshing to hear such a frank statement from the witness stand, but human nature being what it is, we do not find defendants in criminal cases entering pleas of "not guilty" and then taking the witness stand and then confessing their guilt.

Mr. Kessling, in great oratory, reminded us that the Hammer and Sickle is not flying over the courthouse yet. I daresay such a reminder was necessary. I suspect, if Mr. Forster and people who assisted him, had been accused by the Government of Soviet Russia of not bearing their fair share of the Government's effort, particularly during the war years, a four months' trial before a jury would not have been required to dispose of the matter.

The matter would have been disposed of very briefly and the defendants would have enjoyed none of the rights which have been observed in this courtroom.

However, for the fact that the Hammer and Sickle is not flying over the courthouse, we are in no ways indebted to the principal defendants; in order that we may all continue to enjoy the rights of freedom which the defendants have enjoyed, we must [5505] maintain a strong national defense, and that requires large sums of money and unfortunately, there is no way to raise this money ex-

cept by taxes—taxes—taxes. Taxes are the lifeblood of your national defense, and unless we want to have another flag flying over this Country, we must enforce our tax laws.

Now, as I approach my conclusion in this matter, I have boiled down in a few pages what I think the evidence shows over all with all the contributions that have come from the unwilling lips of the witnesses, from the lips of defendants, and from the records in the four months almost that you have spent here.

The planning Forster had the plan to expand, gain more business, and from each, get income concealed for taxes. First, you have an Egeness. He gets his profit—his salary—and no objection is made by him of taking a part in the concealed kickback. Where you have a Schneider, he gets his, and the kickback through a concealed plan to Forster via not only endorsed checks but then to make it more perfect, by cashier's checks at another bank. And Taylor supervised all these affairs, plus additional changes of inventory at Finstad and Utgard and [5506] at Renton. Where you have an honest Keck at Apex, the money is removed through legitimate checks, sidetracked at Issaquah by Erickson and Forster to account 198. Where you have an honest Wilcox at Alpine, the company removed, through fictitious expenses and diverted checks at the Issaquah Creamery by Erickson and Forster to account 198. Where you have an Erickson you do all these things, divert checks, fictitious expenses, hold out sales cash and checks, have the alterations of the

books and records. And, where you have a Taylor, you have an overseer field general and the supervisor of all these operations. And, where you have a Forster, you have an empire builder and tax evader expanding through scheme after scheme, acquiring business after business, putting competitor after competitor out of misery, profiting in every venture he entered by concealing from the authorities of his adopted Country taxes due and owing from these profits.

Was there an attempt to conceal? Look there for this consistent pattern in the several companies comprising the Forster empire—Simonson and Forster, Incorporated, Hans Forster received a salary of $100 a month for in excess of two years, and I wish to adopt Mr. LeSourd's statement. The [5507] checks were not charged on the books to salary, but were by some strange coincidence charged to general expenses without any withholding tax being deducted from Forster's salary, and no withholding or wage statement being furnished to the Government.

Finstad and Utgard monthly payments of $300 per month were made to Mrs. Finstad by Finstad and Utgard check. These payments were made on behalf of Hans Forster. The books show these payments as charged to Egeness with no records commenting or indication of any kind that these payments were made on behalf of Forster to pay for the Finstad and Utgard stock. Of course, the Government was not, by some strange coincidence, informed of these payments, and was able to learn

of it only after an extensive investigation was begun and commenced with the Forster enterprises.

The Renton Ice and Ice Cream Company — in some ways, this commands a grudging analysis. It was this company that near perfection was reached. In this instance, there was an agreed three-way split of Forster's salary between Baskett, Schneider and Forster. But, how were the salaries shown on the books? As salary only to Baskett and Schneider. In fact, the plan went so far to even eliminate the [5508] name of Forster on the checks paid to him.

These checks were in some instances issued in the names of Baskett and Schneider, and endorsed over to Forster. In another instance, not even company checks were issued, but bank's cashier's checks were purchased and forwarded to Forster to completely hide and conceal Forster's name and the fact that he was receiving income from this company. Here was the supreme effort and attempt to conceal.

Alpine Dairy, and the Issaquah Creamery Company: On the Alpine Dairy books, you have been shown check after check written for Forster's personal expenses, and charged on the books as business expense. No mention was made, no notation was shown on the books that these were Hans Forster's personal expenses. Erickson has attempted to explain that he gave it no thought. Special Agent Eppler testified that the person looking at the check register, or even the checks, or the check stubs, would not be able to tell whether a check had been

issued for personal expenses, and under normal circumstances, who would be expected to question and examine hundreds of the checks issued by this company with the specific purpose of finding personal checks charged to business.

The very same pattern of concealing personal [5509] expenses was devised and used on the Issaquah Creamery Company's books. In addition, a much greater concealment was perpetrated in the form of the diverted Issaquah sales receipts. There was another masterful stroke, or at least, it was thought to be; here were sales receipts not recorded on the books. What better way could there be to conceal something than to have no record at all of the receipts?

But, the grand plan went even further to the point of destroying the invoices and the bills which might leave a trail of cash sales. The only thing that was forgotten in this grand plan of concealment for tax evasion was what to do to hide account 198?

Here was the one thing they couldn't conceal, destroy, or throw away, and still reap the harvest or the benefits of tax evasion, and certainly this account 198 is the one thing standing alone, now fully exposed, that spotlights and completely illuminates their attempt to avoid taxes.

I have not referred to an exhibit but to direct your attention to an exhibit there is an exhibit that was placed in evidence that is most important in my opinion in your deliberation for what [5510] is not on it, rather than what is on it. This Exhibit,

A-142, was put into evidence during the side show about the Kachlein episode, in which we have at all times and do now disavow any connection with and have no part in, but it came in at that time, and, as you recall, it was a document that was prepared on behalf of Mr. Taylor by Mr. Kachlein when Mr. Kachlein was subject to investigation by the United States Probation Officer.

Bear in mind, Ladies and Gentlemen of the Jury, when you look for the omitted name on this document——

The Court (Interposing): Mr. Moriarty, you mean Mr. Taylor?

Mr. Moriarty: Excuse me. Didn't I say Taylor? Bear in mind, when you look for the omitted name on this document of Mr. Taylor's, that Mr. Taylor's request or motion for leniency was that he had been working 16 to 18 hours a day, and had been neglectful of his own personal affairs. He was then in command of the Forster enterprises, and the Forster enterprises were the people who were keeping him working 16 to 18 hours a day, his largest account.

The man who could explain to the Probation Officer more fully than any other individual was [5511] Hans Forster, and yet you can take this document, read it through, and while it lists the names of various people over two pages, I think approximately ten names, the name of Hans Forster is peculiarly missing.

Mr. LeSourd: Mr. Moriarty, would you please refer to the first part of this, where it says that

these names are in addition to the names previously supplied.

Mr. Moriarty: I didn't know that.

Mr. LeSourd: I wish you would correct that before the Jury.

Mr. Moriarty: I have never seen this document.

Mr. LeSourd: It is in that letter. It is that which you have before you.

The Court: I suggest that counsel address the Court, if you interrupt argument.

Mr. LeSourd: I am sorry.

Mr. Moriarty: Ladies and Gentlemen of the Jury: This case involves fraud, cheating your Government and mine. Three defendants are charged. The integrity of a Nation depends upon its law observance. The Nations that have disappeared in the past have been Nations that did not observe their laws and law observance; and the taxes of the Government are things that are the sinews of the Government, that [5512] make it possible for these institutions, the Courts and the Juries, to function.

We have heard about the Little World at Issaquah that went shattering to ashes.

I am reminded that if one million dollars in taxes had been paid by Hans Forster, on account of his understatement of taxes, there will remain in the Little World at Issaquah another million dollars and a half if two million six hundred thousand dollars was paid for the Forster enterprises without account 198 and without the Cadillac, the barns and the houses.

We have heard of this Little World at Issaquah,

and we have heard of the book, "The Little World" and I would like at this time to indulge in some matchless prose that Edwin Markham wrote:

"Yet all the while, in secret, without sound;
"The fat worm gnawed the timbers underground.
"The twister worm whose epoch is an hour
"Caverned its way into the mighty tower
"And suddenly it swayed, it shook, it broke
"And fell in darkening thunder at one [5513] stroke.
"The tall shaft, with an angel on the crown,
"Fell ruining—a thousand years went down.
"And so I fear, my Country, not the hand
"That shall hurl might and whirlwind on the land.
"I fear not Titan traitors that shall rise
"To stride like broken shadows on our skies.
"I fear the vermin that shall undermine
"Senate and school and citadel and shrine;
"The worm of fraud, the fatted worm of ease
"And all the crawling progeny of these.
"I fear the vermin that shall honeycomb the towers
"And walls of State in unsuspecting hours."

I now close. I have no doubt that you have been moved by the arguments of Counsel. They are men of many talents. They have been brought here to sway you to their way of thought. My only sworn duty is to see that Justice is done. I want [5514] no conviction for personal reasons. I would be false to the trust given to me by the President of the United States if I did. This is your Government, the

future of your America, the heritage of you and your children.

I have endeavored to analyze the evidence and testimony to show deliberate evasion, expertly conceived, and cleverly accomplished, and wilfully done by each of the defendants and it has been clearly shown. It is my humble opinion that Hans Forster did not want to pay taxes on any income which he could hide, and that his wish was carried out by his aides to accomplish only one thing — saving money for him and leaving to others the burden of Government in the defense of its Constitution.

If you believe that was innocently done, you should acquit the defendants; but, if you consider acquitting Mr. Forster, then don't humiliate the Government by convicting the other defendants.

You are the conscience of this District. Before you commit yourselves to a verdict, analyze for yourselves the evidence. It is not for you to find ways to avoid a duty, even though that duty, like mine, is not pleasant.

I ask you to do your duty to the Government [5515] and to these Defendants under the Court's instructions.

Last January, you were sworn to well and truly try this case. Today, you are asked to discharge that oath.

I wish only a true verdict, and I ask The Eternal God to guide you and your judgment that it will be a true verdict, So Help You God.

* * * * * [5516]

The Court: Members of the Jury:

You have now heard the evidence in this case and the argument. It becomes the duty of the Court to instruct you as to the law governing the case. It is your duty, as jurors, to follow the law as stated in the instructions of the Court and to apply the law so given to the facts as you find them from the evidence before you. You are not to single out but one instruction alone as stating the law, but must consider the instructions as a whole.

And regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon [5521] any other view of the law than that stated in the instructions of the Court. These instructions will *not* be given to you and under the procedure followed in the Federal Court it will be incumbent upon you to listen attentively and retain insofar as possible from the Court's statement of the instructions the law as contained therein.

Unless otherwise indicated, each instruction given, that is, each particular subject as covered by the instructions should be considered by you as referring separately and individually to each defendant here on trial, unless specifically otherwise indicated.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the Indictment and the denial made by the pleas—in this case, not guilty—of the accused. And in so doing you are to discharge a function requiring the highest standards of impartiality. You are to perform this duty without bias or prejudice as to any party. The law does not permit

jurors to be governed by sympathy, prejudice, or public opinion. The accused and the Government and [5522] the public all expect that you will carefully and impartially consider all the evidence, follow the law as stated by the Court in these instructions and reach a just verdict.

An Indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused, and does not create any presumption or permit any inference of guilt.

Rather, the law presumes every defendant to be innocent until he is proven guilty by the evidence beyond a reasonable doubt. This presumption is not a mere matter of form but is a substantial right of every defendant and this presumption continues throughout the entire trial and until such time as you have found that it has been overcome by the evidence beyond a reasonable doubt. Thus, a defendant, although accused, begins the trial with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of the charge against him. So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt from all the evidence [5523] in the case.

A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence.

A reasonable doubt exists in any case when, after the careful and impartial consideration of all the evidence, the jurors do not feel convinced to a

moral certainty that a defendant is guilty of the charge.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, a defendant has the right to rely upon a failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of a witness for the prosecution. The law does not impose upon a defendant the duty of producing any evidence.

You are further instructed, however, that proof beyond a reasonable doubt does not mean that the evidence shall establish the guilt of a defendant beyond all possible doubt. It is rarely possible to prove anything to an absolute certainty. [5524] The law does not require absolute certainty of guilt before there can be a verdict of guilty at your hands.

You must use your common sense as men and women possessing some knowledge of the ways of life, and if, after examining carefully all of the facts and circumstances established by the evidence in this case and then if you can feel and say that you have a settled and abiding conviction of the guilt of a defendant then you are satisfied beyond a reasonable doubt.

Proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act upon in the most important of your own affairs.

There are two types of evidence from which a jury may properly find a defendant guilty of an offense, or, on the other hand, innocent. One is direct evidence—such as the testimony of an eye witness. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, [5525] but simply requires that, before convicting a defendant, the jury be satisfied of the defendants' guilt beyond a reasonable doubt from all the evidence in the case.

In order to justify a verdict of guilty based in whole or in part upon circumstantial evidence, the facts in the chain of circumstances shown by the evidence must be consistent with the guilt of the accused and inconsistent with every reasonable supposition of innocence.

If the facts and circumstances shown by the evidence are as consistent with innocence as with guilt, the jury must acquit the accused.

Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When counsel for the Government on the one hand and counsel for one or more of the defendants on the other stipulate or agree to the existence of a fact, the jury must accept the stipulation as evidence and regard that fact as conclusively proved as between or among the parties to the stipulation.

There is nothing peculiarly different in [5526]

the way a jury is to consider the proof in a criminal case from that in which all reasonable persons treat any question depending upon the evidence presented to them. You are expected to use your good sense; consider the evidence for only those purposes for which it has been admitted, if limited, and give it a reasonable and fair construction.

Bear in mind at all times that it would be a violation of your sworn duty to base a verdict upon anything but the evidence in this case.

If the accused be proved guilty, say so.

If you find him innocent, say so. Remember at all times that a defendant must be acquitted if any reasonable doubt remains in your minds.

The evidence in the case consists of the sworn testimony of the witnesses, all exhibits which have been received in evidence, all facts which have been admitted or stipulated and all applicable presumptions stated in these instructions. Any evidence as to which an objection was sustained by the court and any evidence ordered stricken by the court must be entirely disregarded.

You are sworn to consider only the evidence in the case. But in your consideration of the evidence you are not limited to the bald statements of the [5527] witnesses. On the contrary, you are permitted to draw, from facts which you find to have been proved, such inferences as seem justified in the light of your experience.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from facts which have been proved.

A presumption is an inference which the law in certain instances requires the jury to make in the absence of convincing evidence to the contrary. A presumption continues in effect until overcome or outweighed by evidence to the contrary; but unless so outweighed the jury is bound to find in accordance with the presumption.

Unless and until outweighed by evidence to the contrary, the law presumes that transactions between persons have been fair and regular; that the ordinary course of business has been followed; and that the law has been obeyed.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. A witness is presumed to speak [5528] the truth. But this presumption may be outweighed by the manner in which the witness testifies, by the character of the testimony given, or by contradictory evidence. You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, his demeanor and manner while on the stand. Consider also the relation each witness may bear to parties in the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence.

A defendant is a competent witness and his testi-

mony is to be judged in the same manner as that of any other witness.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, [5529] like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or willful falsehood. If you find the presumption of truthfulness to be outweighed as to any witness, you will give the testimony of that witness such credibility, if any, as you think it deserves.

A witness may be discredited or impeached by contradictory evidence; or by evidence that at another time the witness made statements inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you think it deserves. [5530]

Now, coming to the Indictment in this case:

The defendants are here charged under an Indictment consisting of nine counts with a violation of a Federal Statute, the applicable provisions of which read as follows:

"Any person required to collect, account for, and pay over any tax imposed * * * who willfully attempts in any manner to evade or defeat any tax imposed * * * or the payment thereof * * * shall * * * be guilty of a felony."

The first count charges the defendants with wilfully and knowingly attempting to defeat and evade a large part of the income tax due and owing by Hans Forster for the calendar year 1945 by filing and causing to be filed with the Collector of Internal Revenue at Tacoma, a false and fraudulent income tax return, when they knew at the time that the net income of Hans Forster was substantially greater than that reported.

Counts II, III and IV of the Indictment make the same charge as that contained in Count I except that the charge relates to the income tax of Hans Forster for the years 1946, 1947 and 1948, respectively. The charge contained in Count V is [5531] similar to the charge in the first four counts but relates to the combined income tax of Hans Forster and his wife, Evelyn Forster, for the year 1949.

As to the remaining counts, that is, Counts VI, VII, VIII and IX, they charge the defendants, Hans Forster, L. Hicks Taylor and Harold Erickson, (alleging they were President, Secretary and Office Manager, respectively, of the Issaqual Cream-

ery Co.), with willfully and knowingly attempting to defeat and evade a large part of the taxes due and owing by the Issaquah Creamery for the calendar years 1946, 1947, 1948 and 1949, respectively, by filing and causing to be filed with the Collector of Internal Revenue, at Tacoma, Washington, a false and fraudulent tax return when they knew at the time that the net income of the corporation was substantially greater than that reported.

I believe what I have stated is a sufficient summary of the charge contained in the Indictment against the defendants.

Of course, the Indictment will be given to you in order that you may more fully understand the various counts, and you will be allowed to take it to the jury room for your examination and study so that [5532] you can more fully understand the charges contained therein. Let me instruct you again, however, that the Indictment isn't evidence at all; it is merely a formal instrument whereby persons are charged and brought to trial. You should clearly understand, therefore, that when the Indictment goes with you to the jury room it is only for the purpose of giving you a better understanding as to the nature of the charges against the defendants.

Each defendant has entered a plea of not guilty to each and all of the nine counts of the Indictment and that means that each defendant denies every material allegation contained in the Indictment and every material allegation in each count thereof, thereby placing upon the Government the burden

of proving beyond a reasonable doubt every material allegation in the Indictment.

The essential elements of the crime or offense charged in each count of the Indictment are three:

(1) That there was owing to the Government more income tax than that shown in the return of the taxpayer for the particular taxable year in the applicable count of the Indictment; [5533]

(2) That the particular defendant knew that there was owing more income tax than that shown in the income tax returns; and

(3) That the particular defendant willfully attempted to evade or defeat part of such tax by filing or causing to be filed a false return.

With respect to the first essential element—namely, that there was owing to the Government more income tax than that shown in the return of the taxpayer for the particular taxable year in the applicable count of the Indictment—as to that first element I believe it proper at this time for the Court to make some observation or comment on the evidence so far as it relates to that first essential element. Of course, it is within the province and is the right of the jury to disregard entirely the Court's comments on the evidence. However, the defendant Forster, the taxpayer involved in the first five counts of the Indictment, and for practical purposes the sole owner of the stock of the Issaquah Creamery which is the taxpayer involved in the last four counts of the Indictment, has, through his counsel, Mr. Griffin, admitted from the outset of this trial that [5534] there was owing substantially

more income tax than that shown in the return of the taxpayer for all the years covered by each count of the Indictment. The defendants Taylor and Erickson, so far as the Court has been able to determine from the evidence, do not dispute that issue. In view of this situation I suggest to the jury that you should have little difficulty in determining from the evidence that the first essential element has been proved beyond a reasonable doubt as to all defendants and with respect to all counts.

In making this observation I do not infer in any way that all the items of undisclosed income or all items of apparent personal expense charged to business expense as may appear in evidence are taxable as contended by the Government. By way of illustration, there has been considerable evidence admitted relative to payment of salary by Finstad and Utgard to Mr. Egeness. The Government contends that a portion of this salary was paid by Mr. Egeness to Mrs. Finstad for the benefit of Mr. Forster and therefore they assert that it was income of Mr. Forster for the years during which it was paid to Mrs. Finstad. The Defendant Taylor contends otherwise, or more precisely, as urged by his counsel, that the tax liability [5535] as to the item was uncertain during the years involved.

It is the Court's view of the evidence that the taxability of this item as well as other disputed items of alleged income is immaterial with respect to the first essential element of the offense and for that purpose such items may be eliminated from your consideration as items of income, of course,

provided you find there is no dispute as to the issue that there was owing substantially more income tax than that shown in the returns of the taxpayer for all the years involved.

Now bear in mind I make no comment or observation as to these matters in evidence except as they relate to or bear upon the first element of the offense charged as I have stated. What consideration you are to give the evidence as to these items in connection with the remaining two essential elements, namely, each defendant's knowledge that substantial tax was owing, and whether there existed a willful attempt on the part of any or all the defendants to evade any of it, is a matter left exclusively and entirely to your determination.

Those last two elements are the most important elements for your determination in this case [5536] and many of the following instructions will be devoted to clarifying to the best of my ability what the willfulness and knowledge as required in this case is or must be.

You must consider each count separately and also you must consider each defendant separately with regard to each and every count. If, as to a particular defendant, you find that all the elements have been established beyond a reasonable doubt as to a particular count you should find that defendant guilty as to that count. On the other hand, if you have any reasonable doubt as to any one of these three elements you should acquit the particular defendant concerned as to such count.

The gist of the offense charged in the Indictment

is willful attempt to evade or defeat the income tax imposed by the income tax law. The word "attempt" as used in this law involves two elements:

(1) an intent to evade or defeat the tax, and

(2) some act done in furtherance of such intent.

The word "attempt" contemplates that a defendant had knowledge and understanding that during the calendar year 1945 to 1949, inclusive, Hans Forster, or in the [5537] case of Counts VI to IX, inclusive, the Issaquah Creamery Company during the years of 1946 to 1949, inclusive, had an income in such years which was taxable and which was required by law to be reported and that such defendant attempted to evade and defeat the tax thereon, or a portion thereof, by purposely causing the respective returns to exclude income which such defendants knew Hans Forster or Issaquah Creamery Company had received during the years in question, and which such defendants knew should be included in such returns.

With respect to the offenses charged there must exist a union or joint operation of act and intent. The burden is always upon the prosecution to prove both act and intent beyond a reasonable doubt.

A person is held to intend all the natural and probable consequences of acts knowingly done. That is to say, the law assumes a person to intend all the consequences which one standing in like circumstances and possessing like knowledge should reasonably expect to result from any act which is knowingly done.

With respect to offenses such as charged in this

case, proof of specific intent is required before there can [5538] be a conviction. Now, specific intent, as the term suggests, means more than a mere general intent to commit the act.

A person who knowingly does an act which the law forbids, or who knowingly fails to do an act which the law requires, purposely intending to violate the law or recklessly disregarding the law, acts with specific intent.

It is not necessary for the Prosecution to prove knowledge of the accused that a particular act or failure to act is a violation of the law. Everyone is held to know what the law forbids and what the law requires. However, evidence that the accused acted or failed to act because of ignorance of the law is to be considered in determining whether or not the accused acted or failed to act with specific intent or knowingly and willfully as charged.

The law provides that any person who aids, abets, counsels, or induces the commission of an offense against the United States is punishable as a principal. Therefore, in order to find any defendant guilty as to any count of the Indictment it is not necessary for you to find that he participated in all the acts out of which [5539] the understatement of income and tax for that year arose or for you to find that he had knowledge of all such acts. It is sufficient if you find beyond a reasonable doubt that he willfully and knowingly aided or assisted in the evasion of any substantial part of the tax owing for the year covered by the applicable count. In

other words, a defendant becomes a principal when he consciously shares in the offense.

You will note that the acts charged in the Indictment are alleged to have been done "willfully and knowingly."

An act is done "willfully" if done voluntarily and purposely and with a specific intent to do that which the law forbids.

"Willfulness" implies bad faith and an evil motive.

An act is done "knowingly" if done voluntarily and purposely and not because of mistake, inadvertence or some other innocent reason.

Intent may be proved by circumstantial evidence. It rarely can be established by any other means, because we know that while witnesses may see and hear and thus be able to give direct evidence of what a defendant does or fails to do, there can be no [5540] eye-witness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit the offense charged.

In determining the issue as to intent the jury is entitled to consider any statements made and acts done or omitted by the accused, and all facts and circumstances in evidence which may aid determination of state of mind.

You are entitled to consider the motive, if any, of the respective defendants in connection with the various transactions involved as bearing upon the

existence or non-existence of the required specific intent.

You are instructed that the Government is not obliged to prove an attempted evasion of the entire amount of the tax as alleged in the Indictment. It is sufficient for the Government to prove beyond a reasonable doubt that there was an attempt to evade any substantial portion of the tax liability for the years charged in the various counts of the Indictment. The word "substantial" as here used depends upon the facts in each case—it means more than a small sum that may have been the result of [5541] an honest mistake or miscalculation. It is not necessary to prove that the tax due was actually evaded but it is necessary to prove that there was a willful and positive attempt to evade the tax in any manner or to defeat it by any means.

The signing of an income tax return by a taxpayer makes it his return and if it is false and the taxpayer knows it to be false, he violates the law if he files it willfully and with an intent to evade the payment of his tax.

Every person subject to income tax, except persons whose gross income consists solely of salary or wages for personal services or arises solely from farming,—every other person—is required to keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of the gross income and the deductions, credits and other matters required to be shown in any income tax return.

A crime, such as the offense charged here, may

not be imputed to one defendant because of the acts of another simply because the former [5542] stands in a relation of employment, trust or confidence with that other defendant. Thus, if a taxpayer operating a business, uses ordinary business care and prudence in the selection of office personnel and employees and in the selection of an accountant or tax adviser and supplies or makes available all necessary information, and requests such accountant or tax adviser to prepare an income tax return, and the taxpayer signs and files the return prepared by such accountant or tax adviser in reliance upon the skill, knowledge, ability and competence of his office employees and accountant and tax adviser, should it happen that such tax return prove fraudulent, the taxpayer is not guilty of such fraud unless he knew the return to be false and filed it with intent to evade tax. In this connection, however, you should bear in mind that the owner of a business need not be the actual bookkeeper to be familiar with the affairs and finances of his business.

Good faith on the part of a defendant is a complete defense to the charges set forth in the Indictment. Thus bona fide mistakes in preparing or filing a tax return are not to be considered by you as false or fraudulent statements within the [5543] scope of the charge made in the Indictment because willful evasion of tax requires an intentional act or omission as compared to an accidental or inadvertent one. It also requires a specific wrongful intent to conceal an obligation known to exist as compared

to a genuine misunderstanding of what the law requires or a bona fide belief that certain receipts are not taxable. Likewise, negligence or carelessness in the handling of books of account, in providing information to be used in preparing income tax returns, or in handling business affairs is not equivalent to fraud with intent to evade tax.

On the other hand, one who signs a tax return, or assists in preparing a return or in providing information to be used therein cannot escape the responsibility of good faith and ordinary care and attention as to the correctness of a return which he may sign, file or cause to be filed. A man may not close his eyes to obvious facts and say he is not aware of them. He must exercise such intelligence as he has and if the evidence establishes beyond a reasonable doubt that a defendant intended to conceal tax liability from the Government then, of course, he was not acting in good faith. [5544]

The low provides that the net income of the taxpayer shall be computed upon the basis of the taxpayer's annual accounting period, in accordance with the method of accounting regularly employed in keeping the books of the taxpayer. The method of accounting employed does not clearly reflect the income a computation shall be made upon such basis and in such manner as, in the opinion of the Commissioner of Internal Revenue, does fairly reflect the taxpayer's income.

When books are found to be inadequate the Government is authorized by law to adopt a reasonable method of ascertaining income. The net worth and

expenditures method has been recognized in law as such a method.

A person's net worth for a given year is the difference between all his assets on one hand and all his liabilities on the other. An increase in net worth for any year is computed by subtracting the net worth at the beginning of the year from the net worth at the end of the year. In order to compute taxable net income under this net worth and expenditures method you take the increase in net worth for the particular year and add to it the taxpayer's living expenses and income taxes [5545] paid for that year. From this total you must subtract nontaxable funds, such as gifts or inheritances, received during the year. If the remainder exceeds the taxpayer's exemptions and deductions, such income is taxable.

You are instructed that although the defendants herein are charged with attempting to evade income taxes of Hans Forster for the years 1945 to 1949, inclusive, and with attempting to evade income taxes for Issaquah Creamery for the years 1946 to 1949, inclusive, the court has, nevertheless, permitted evidence of transactions of Hans Forster or the Issaquah Creamery for earlier years. Such evidence is to be considered by you only so far as you may find it bears upon or relates to the knowledge or intent of each defendant with respect to similar transactions during the years charged, providing, of course, that you first find from the evidence beyond a reasonable doubt that there was an understate-

ment of income and taxes, which, as I indicated before, the Court finds in dispute.

Similarly, the Court has permitted evidence of the net worth of Hans Forster for earlier years, and such evidence is to be considered by you [5546] only so far as you may find it bears upon or relates to the net worth of Hans Forster at the end of the years 1944 to 1949, inclusive, or as it bears upon or relates to the knowledge and intent of Hans Forster during the years 1945 to 1949, inclusive, with respect to income tax evasion, again, if you find, of course, beyond a reasonable doubt, first that there was an understatement of income and taxes for any of the years charged, which again, as I stated to you, the Court feels there is no question.

Evidence likewise has been admitted concerning transactions of corporations other than the Issaquah Creamery, including books, records and tax returns of the various so-called Forster enterprises, in some instances covering periods in years prior to as well as during the years covered by the Indictment. We are not here concerned with the tax liability of persons other than Issaquah Creamery and Hans Forster. Therefore, such evidence, apart from any bearing it may have upon income received by Issaquah Creamery and/or Hans Forster for the years included in the Indictment, is to be considered by you only so far as you may find it bears upon or relates to the knowledge or intent of each defendant [5547] with respect to similar transactions of Hans Forster and Issaquah Creamery Co. during the years charged, providing, again, you first find

from the evidence beyond a reasonable doubt that there was an understatement of income and tax for any of the years charged.

Defendants Taylor and Erickson are charged with willful attempt to evade and defeat the income taxes of Hans Forster and Issaquah Creamery, and the defendant Forster is likewise charged with willful attempt to evade and defeat the income taxes of himself and Issaquah Creamery. In this regard it is not necessary for you to find that a defendant so charged was concerned in the actual preparation of the false and fraudulent income tax return, if filed by another.

Section 145(b) of the Internal Revenue Code punishes a willful attempt to evade and defeat taxes in any manner and so you may find that conduct such as keeping false books, making false entries in the books, failing to make entries in books, altering invoices or other records, concealment of assets, covering up sources of income, handling one's affairs to avoid the making of usual records and any conduct the likelihood of which would be to mislead or conceal [5548] as constituting an attempt to evade and defeat taxes.

There is a distinction between the civil liability of a defendant and the criminal liability. This is a criminal case. The defendants are charged under the law with the commission of a crime, and the fact that civil liability for the payment of taxes claimed to be due the United States has or has not been settled, in other words, if civil liability has been settled or not—is not to be considered by you

in determining the issues in this case, except in one respect and that is that it may throw some light on the intent of the defendant Forster.

The defendant, Taylor, as the evidence shows, has previously pleaded guilty to a charge of attempted evasion of his personal income tax for the year 1943.

You are entitled to consider this fact only in connection with your assessment of his credibility as a witness. You are not to consider Mr. Taylor's previous plea of guilty as in any way tending to establish any of the elements which the Government must prove in this case in order to establish guilt as to any of the counts in the Indictment. [5549]

Witnesses have testified in this case as to the general reputation of defendants in this case for honesty and integrity and for truth and veracity. Such testimony was offered to show the good character of such defendants. The jury should consider such evidence along with all other evidence in the case. Evidence of a defendant's reputation, as to those traits of character ordinarily involved in the commission of the crime charged, may in itself give rise to a reasonable doubt, since the jury may think it improbable that a person of good character in respect to those traits would commit such a crime.

There is evidence, consisting of testimony of accountants, as well as exhibits prepared by accountants, which have been admitted as or in connection with expert opinion on issues involved in this case.

Such evidence may serve to assist you in your consideration of the issues here involved, but you

are not bound by the computations or other opinion testimony of an expert. You should give such evidence the weight and consideration you believe it deserves in the light of other proof in the case, particularly as to whether or not the facts on which the expert's [5550] testimony was based have been established by other evidence.

Reference has been made in the testimony of several witnesses to certain sales of ice cream or ice cream mix by Issaquah Creamery as over-quota.

As to such references I caution you that we are not here concerned in any manner with any wartime law, regulation or practice relative to quota, under-quota or over-quota sales of ice cream or any other food products.

Therefore, any characterization of a rule or transaction as over-quota is not to be given any significance because of that circumstance alone.

During the course of the trial, I have occasionally asked questions of a witness in order to bring out facts not then fully covered by the testimony.

Do not assume that I hold any opinion on the matters to which my questions related. Remember at all times that you, as jurors, are at liberty to disregard all comments of the Court in arriving at your own findings as to the facts.

It is the duty of the Court to admonish [5551] an attorney who, out of zeal for his cause, does something which is not in keeping with the rules of evidence or procedure. I think there are few instances in this case, if any.

You are to draw no inference against the side to

whom an admonition of the Court may have been addressed during the trial of this case.

It is the duty of lawyers upon each side to make objections when the other side offers evidence which counsel believes is not admissible under the rules of evidence.

It is the duty of the Court to decide whether under the rules of evidence, testimony or other evidence may be received.

Whenever the Court has sustained an objection to a question, you are to disregard that question, and may draw no inference from the wording of it or speculate as to what the witness would have said if permitted to answer. Nor may you assume any party has objected to a question because that side expected the answer, if given, to be unfavorable.

During the trial of this case the Court has permitted certain evidence to be introduced over the objection of counsel. In so ruling the Court has not determined or indicated any opinion as to the weight [5552] or effect of such evidence.

In judging the credibility of witnesses and the weight and effect of evidence, you are not to consider the rulings or comments of the Court in admitting or rejecting evidence.

The punishment provided by law for the offense charged in the Indictment is a matter exclusively within the province of the Court, and is not to be considered by the Jury in arriving at an impartial verdict as to the guilt or innocence of the accused.

It is your duty to give separate, personal con-

sideration to the case of each individual defendant.

When you do so, you must analyze what the evidence shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely against some other defendant or defendants.

Each defendant is entitled to have his case determined solely from his own acts and statements and the other evidence in the case which may be applicable to him.

The law of the United States permits the [5553] judge to comment to the jury on the evidence in the case. Such comments are only expressions of the judge's opinion as to the facts.

With respect to any comments I have made you are free to disregard them entirely, since the jurors are the sole judges of the facts.

Under these instructions you may find all three defendants guilty or all not guilty, or you may find one or two of them guilty and the remaining two or one not guilty of the charge contained in the particular count.

The verdict must represent the considered judgment of each juror. In order to return a verdict it is necessary that each juror agree thereto. In other words, your verdict you reach must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view of reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not

hesitate to re-examine your own views and [5554] change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or the effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

There is no fixed method of procedure for you to follow during your deliberations. However, you should proceed in such a way as to give every juror an equal chance with every other to express his views and in such a way as will tend to produce the most intelligent result possible.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion on the case or a determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved, and the juror may later hesitate to recede from an announced position even when shown it is incorrect. You are not partisans. You are judges—and when you go into the jury room, you are the sole judges of the facts in this case. Your sole interest is to ascertain the truth from the evidence in the case and you will make a worthwhile contribution to the administration of [5555] justice if you arrive at an impartial verdict in this case.

Upon retiring to the jury room, you will select one of your number to act as foreman. If you choose, you may select one of the ladies.

The foreman will preside over your deliberations and be your spokesman in Court.

Forms of verdicts have been prepared for your convenience. There is a form for each defendant, one for Mr. Forster; one for Mr. Erickson, and one for Mr. Taylor. It reads: "We, the jury in the above-entitled case, find the defendant guilty as charged in Count I of the Indictment, ... guilty as charged in Count II of the Indictment," and so on. Put in "is," if you find him guilty; put in "not," if you find him not guilty. There is a place for signature at the end to be signed by the foreman, and a place to fill in the date when you reach the verdict.

You will take these forms to the jury room and when you have reached unanimous agreement as to your verdict you will have your foreman fill in, date and sign the forms to state the verdict upon which you agree as to each defendant, and then return with your verdicts to the courtroom. [5556] You will find envelopes up there. Each verdict, when reached, should be folded, inserted in the envelope and sealed, and then brought back with you to the court room.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by one of the Bailiffs. In this respect, you will find paper and pencil up there and any communication you wish should be written out, addressed to me, stating what your inquiry will be. You may not have one, but in the event you should happen to, that is the procedure you should follow. But bear in mind on such occasions you are not to reveal to the court or any person how the jury stands,

numerically or otherwise, on the question of the guilt or innocence of the accused, or any of them, or as to any count, until after you have reached an unanimous verdict.

That, Ladies and Gentlemen of the Jury, completes the Court's instructions.

Now, under the law, the counsel are authorized, and it is their duty to confer with the Court relative—in the absence of the Jury, relative to any matters contained in the instructions which they believe should be considered. [5557]

Therefore, I will excuse you now. You should not begin your deliberations, however, and don't start any discussion of the case. Just remain there and without going into these matters, just as you have on the occasion of other recesses, and in the short time—I trust it will be a short time—the Court will call you back and will advise you if there are any further instructions.

The Bailiffs will then be sworn, and you will then begin your deliberations in accordance with the instructions as I have now given them to you. If you should have any specific question, if you wish to ask when you come back, you may do so. I don't mean as to the evidence, but if there is some misunderstanding, or some question you want to know as to how to proceed, if you will state it, I will attempt to enlighten you.

Is there anything further before we excuse the Jury at this time?

Mr. Griffin: No, your Honor.

Mr. Moriarty: No, your Honor.

The Court: All right. Bear in mind the admonition given you. You may now be excused.

(Whereupon, the jury retired from the court room.) [5558]

* * * * *

The Court: Members of the Jury:

I am sorry we were a little delayed in responding to your request but, first of all, I have a note which reads as follows:

"The Jury wishes an interpretation of the word willfully as used in the Indictment. Harold F. Craft."

Is that correct?

The Foreman: Yes, sir; of the entire Jury.

The Court: Ladies and Gentlemen of the Jury:

In an effort to meet that request of yours the Court is going to first give you again the instruction I gave you yesterday as to willfully and another instruction that is related to it. I will supplement that with a little further statement which I think in essence is the same but probably stated differently. That is, with different words.

Now I will give you the instruction as I gave it yesterday:

You will note that the acts charged in the Indictment are alleged to have been done "willfully and knowingly."

An act is done "willfully" if done voluntarily and purposely and with a specific intent to do that which the law forbids. "Willfulness" implies bad faith and an evil motive.

An act is done "knowingly" if done voluntarily and purposely and not because of mistake, inadvertence, or other innocent reason.

Now, you will note I referred to specific intent and, therefore, will now read that to you again so that you will have that in mind.

With respect to offenses such as charged [5575] in this case, proof of specific intent is required before there can be a conviction. Specific intent, as the term suggests, means more than a mere general intent to commit the act.

A person who knowingly does an act which the law forbids, or who knowingly fails to do an act which the law requires, purposely intending to violate the law or recklessly disregarding the law, acts with specific intent.

Now, to supplement that, as I say again, I am going to give you, in substance, the same matter.

When used in a criminal statute—that is, the word "willful" or "willfully"—when used in a criminal statute it generally means an act done with a bad purpose, without justifiable excuse, stubbornly, obstinately, perversely.

The word is also characterized—employed to characterize a thing done without ground for believing it lawful, or conduct marked by reckless disregard whether or not one has the right so to act.

That, I believe, Ladies and Gentlemen, covers the request as you have made it; and so, with that further instruction, you may now be excused and return and continue your deliberations. [5576]

(Whereupon, the Jury retired from the court room.)

The Court: It is stipulated the Jury have left the court room?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: Any exceptions?

Mr. Griffin: I feel obligated——

The Court: (Interposing) I feel it is quite all right.

Mr. Griffin: ——on behalf of the Defendant Forster to except to the use of each and every word in the new instruction just given by the Court and particularly that portion of it dealing with "reckless disregard."

The instruction does not cover the use of "good faith," "mistake," and rather stultifies the definition given the Jury originally on willfulness which, except for the use of the words "reckless disregard" was a full and complete instruction in that particular as I view it.

Mr. Cox: The Defendant Taylor would continue to except only to the use of the words "reckless disregard" of the law.

The Court: Consistent with your former [5577] statement.

Mr. Cox: Yes, your Honor.

Mr. Keesling: The Defendant Erickson joins in the exceptions of Mr. Griffin and in addition, particularly for the reason that as applied to this case,

the Defendant Erickson thinks that the instruction should be more definitive than stating that it is a specific wrongful intent to evade a known tax obligation. [5578]

* * * * *

[Endorsed]: Filed February 7, 1955.

[Title of District Court and Cause.]

SUPPLEMENTAL TRANSCRIPT OF RECORD

TRANSCRIPT OF PORTIONS OF PROCEEDINGS

had in the above-entitled and numbered cause, before a Petit Jury, duly empaneled, and the Honorable William J. Lindberg, a United States District Judge, at Seattle, Washington, commencing at 10:00 o'clock, a.m., on the 4th day of February, 1954. [1*]

* * * * *

FRANK B. DONALDSON

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: I want your name, please, and the spelling of your name.

The Witness: Frank B. Donaldson.

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Frank B. Donaldson.)

The Clerk: D-o-n-a-l-d-son (spelling)?

The Witness: Yes.

Q. (By Mr. Maxwell): Will you state your name, please, sir? A. Frank B. Donaldson.

Q. And where do you reside, Mr. Donaldson?

A. 9010 West Shorewood Drive, Mercer Island.

Q. And where are you employed?

A. Peoples National Bank.

Q. In Seattle? A. Seattle, yes.

Q. And that is the central office?

A. Main Office.

Q. Where is that located?

A. 1414 4th Avenue.

Q. And what is your capacity with the Peoples National Bank? [5]

A. Vice-president.

Q. You are Vice-president? A. Yes.

* * * * * [6]

Q. (By Mr. Maxwell): Mr. Donaldson, I have handed you Exhibit No. 121 and ask you if you can identify that document?

A. This is a financial statement submitted to us of Hans Forster as of December 31, 1949.

Q. And, generally, what does it contain?

A. It shows a list of his assets and his liabilities and the net worth.

Q. And net worth; who submitted that document to you, or your bank?

A. The form is signed by Hans Forster, and I cannot say by whom it was submitted.

Q. Do you know Mr. Forster's signature?

(Testimony of Frank B. Donaldson.)

A. Yes, sir.

Q. Is that his signature?

A. That is Mr. Forster's signature. [90]

Mr. Maxwell: At this time, I will offer Exhibit 121 into evidence.

Mr. LeSourd: No objection.

Mr. Griffin: May I inquire?

Was this submitted to you, this statement submitted to you, personally, Mr. Donaldson?

Mr. LeSourd: Objected to. He already testified he didn't know who submitted it.

The Court: This is voir dire on these exhibits. We will proceed with the examination.

Mr. Griffin: My question was, whether this was submitted to you personally, if you recall?

The Witness: No, I do not recall on that particular statement.

Mr. Griffin: Were the—was it signed at the time it was received, if you know, or was it signed later?

The Witness: On this particular statement, I do not recall.

Mr. Griffin: Now, on this particular statement, there is—I would take it, a change of figures by $110,000, a pencilled notation. Do you know who made that?

The Witness: Our credit department. There was an error in addition.

Mr. Griffin: There was an error in addition?

The Witness: Yes, sir.

(Testimony of Frank B. Donaldson.)

Mr. Griffin: Now, attached to the statement is——

Strike the "is".

Well, the third sheet, Puyallup Creamery Company, Profit and Loss Statement, fourth sheet Renton Ice and Ice Cream Company balance sheet, and the last sheet, Renton Ice and Ice Cream Company Profit and Loss Statement.

On the first statement of the Renton Ice and Ice Cream Company are certain words in pencil. Do you know whether they were placed on there at the bank?

The Witness: They undoubtedly are bank markings.

Mr. Griffin: Thank you.

The Witness: Yes.

Mr. Griffin: No objection.

Mr. LeSourd: No questions.

The Court: Exhibit 121 for identification may be admitted.

(Plaintiff's Exhibit 121 admitted in evidence.)

Q. (By Mr. Maxwell): Now, I am handing you Exhibit 122, Mr. Donaldson. [92]

Can you state what that exhibit is?

A. This is a financial statement headed Hans Forster; the statement dated December 31, 1948.

Q. Do you know from whom the bank received this statement? A. No, sir.

Q. Was it handed to you personally?

A. I do not believe so.

(Testimony of Frank B. Donaldson.)

Q. Can you state whether or not that is the signature of Hans Forster?

A. That is the signature of Mr. Hans Forster.

Q. I notice there are some pencilled notations on the document.

Can you state who put those notations on the document?

A. It would appear to be our credit department.

Mr. Maxwell: At this time, the Government will offer Exhibit 122 into evidence.

Mr. Griffin: These notations—May I inquire if the Court please?

The Court: You may.

Mr. Griffin: With reference to Exhibit 122, these notations show no mistake in addition?

The Witness: No, sir; that is merely for our [93] credit department in breaking up the assets and that is a total of current assets segregating it from the total assets. It is merely used for the spread sheet that was submitted as evidence.

Mr. Griffin: By the "spread sheet", you mean?

The Witness: The bank record. I have forgotten the number. The one here.

Mr. Maxwell: No. 129.

The Witness: 129.

Mr. Griffin: 129 for identification.

I think—with reference to the figure on here, which you say is referred to in the spread sheet for quick addition, quick assets, cash and United States Bonds would be quick assets, wouldn't it?

Mr. Maxwell: If your Honor please, this appears

(Testimony of Frank B. Donaldson.)

to me to be matters to be brought out on cross-examination.

The Court: Objection sustained.

Mr. Griffin: I appreciate your Honor's ruling. However, I would like, if I may, to show the exhibit to the witness because I am not trying to impeach him. I think, if he examines the figures, he will find that they are not just what he suggested at all.

The Court: You may let him view it again, if you wish.

Mr. Griffin: He didn't have it before him when [94] he answered. It is these figures here. The total of this interest here. See? Those last two items, is all.

The Witness: That is right. I would have to take that statement back. It is not the quick assets.

Mr. Griffin: Thank you. I have no objection.

Mr. LeSourd: I have no objection to this exhibit, your Honor. It is understood that the pencilled notations on these exhibits that are going in now are the notations of the bank and not properly a part of the exhibit as offered.

Mr. Maxwell: No, that is correct, although they are offered as bank records, your Honor.

The Court: I think the record shows that the pencilled notations are made by the bank and not figures made by Mr. Forster.

Mr. LeSourd: Yes, thank you.

The Court: No objection to the exhibit——

Mr. Maxwell: (Interposing) Pardon me, your Honor. I think Mr. Keesling is still examining it.

(Testimony of Frank B. Donaldson.)

Mr. Keesling: I have no objection.

Mr. Maxwell: You have no objection?

The Court: No objection? Exhibit 122 for identification may be admitted.

(Plaintiff's Exhibit 122 admitted in evidence.) [95]

Q. (By Mr. Maxwell): Mr. Donaldson, I have handed you No. 123. I wonder if you can identify that document, please?

A. This is a financial statement headed Hans Forster, as of February 29, 1948.

Q. And does it have Mr. Forster's signature on it, likewise?

A. It does have Hans Forster's signature.

Q. Can you state who—from whom the bank received that document?

A. This particular statement was received by the writer.

Q. By whom? A. By myself.

Q. By you? A. Excuse me; by myself.

Q. And when was that received, sir?

A. It would appear to have been May 4, 1948.

Mr. LeSourd: Did you say it would appear to have been? I will ask that the answer be stricken, if your Honor please.

Q. (By Mr. Maxwell): Can you state the date upon which you received that, if you know?

A. The only answer I can give is that there is a date on here by the Credit Department, which normally [96] is the date we do receive them. It is not my notation.

(Testimony of Frank B. Donaldson.)

Q. What date is that, sir? A. May 4, 1948.

Q. On this sheet there likewise appears to be pencilled notations? A. Correct.

Q. Can you state who made those notations?

A. Our Credit Department.

Q. And they were not on the document when you received it? A. No.

Mr. Maxwell: At this time, I will offer Exhibit 123 into evidence.

Mr. Griffin: May I inquire?

The Court: Yes.

Mr. Griffin: From whom did you receive Exhibit 123?

Mr. Maxwell: Your Honor, that has been asked and answered.

The Court: I think he said he received it, but not from whom.

Mr. Maxwell: I am sorry.

The Witness: As I recall, I received it from Mr. Forster.

Mr. Griffin: No objection. [97]

Mr. LeSourd: No objection, your Honor, with the same understanding with regard to the pencilled notations.

The Court: The record may so show.

Mr. Keesling: No objection.

The Court: Exhibit 123 for identification may be admitted.

(Plaintiff's Exhibit No. 123 admitted in evidence.)

Q. (By Mr. Maxwell): Mr. Donaldson, I have

(Testimony of Frank B. Donaldson.)

handed you Exhibit 124 for identification. Can you identify that document, please, sir?

A. It is a financial statement of Hans Forster as of March 31, 1947.

Q. And does it likewise contain the signature of Mr. Forster? A. It does.

Q. Can you state from whom your bank received that document?

A. The document received in the bank by Mr. Strack, from Mr. Forster and Mr. Taylor.

Q. Does that sheet likewise have pencilled notations on it? A. There are a few, yes. [98]

Q. And can you state when those pencilled notations were made, and by whom?

A. They would have been made by our Bank Credit Department.

Q. When was this sheet received by Mr. Strack?

A. I believe on May 24, 1947.

Q. This likewise contains the list of assets and list of liabilities and net worth of Hans Forster?

A. Correct.

Mr. Maxwell: I offer Exhibit 124 into evidence.

Mr. LeSourd: Your Honor, while Counsel is examining the document, may I ask the witness some questions on voir dire?

The Court: You may.

Mr. LeSourd: Mr. Donaldson, in saying that Mr. Strack received this statement from Mr. Forster and Mr. Taylor, were you speaking from certain notations in some document that you were examining at the time?

(Testimony of Frank B. Donaldson.)

The Witness: Yes, sir, and I was called into this conference at the time, but it was delivered actually to Mr. Strack.

Mr. LeSourd: May I see the notations, please?

The Court: This has reference to Exhibit 124 for identification?

Mr. LeSourd: That is right, your Honor. [99]

Mr. Maxwell: Your Honor, I would like——

Mr. LeSourd: (Interposing) Excuse me.

Mr. Maxwell: (Continuing) Your Honor, I would like at this time to have the documents that Mr. LeSourd has been examining marked for identification.

The Court: They may be. I understand they are notes.

The Witness: They are part of the file.

Mr. LeSourd: Counsel wants just the ones for this particular day's conversation, or more than that?

Mr. Maxwell: Just for that day.

I think it is continued over here.

Mr. LeSourd: It is, that is right.

The Clerk: Plaintiff's Exhibit No. 130 marked for identification.

(Plaintiff's Exhibit No. 130 marked for identification.)

The Court: Now, the question pending is on the offer on 124.

Mr. LeSourd: I was examining on voir dire and had not completed.

Mr. Maxwell: I am sorry.

(Testimony of Frank B. Donaldson.)

Mr. LeSourd: Referring to the notations in your credit file, what do you call these notations, Mr. Donaldson? [100]

The Witness: They are comments made in our credit file after an interview with the customer by the officer who normally sits in on the interview.

Mr. LeSourd: Yes, and the particular comment on the day May 24, 1947, in what is now marked for identification as Exhibit 130 bears the initials, I notice, "P.A.S."

The Witness: That is Mr. Phillip A. Strack, the Chairman of our Executive Committee.

Mr. LeSourd: And I notice—may I ask you to examine this again and tell me whether there is any direct statement as to who handed the financial statement to Mr. Strack other than merely a statement that Mr. Forster and Mr. Taylor were conferring with him at the time?

Mr. Maxwell: Your Honor, is this proper voir dire?

The Court: If you object, the Court will sustain the objection. Now, the question is: Have you any further questions?

Mr. LeSourd: Not on voir dire.

The Court: Any objections to the exhibit?

Mr. Griffin: No objection.

Mr. LeSourd: We are talking about 124, your Honor?

The Court: That is correct.

Mr. Keesling: No objection to 124. [101]

The Court: 124 may be admitted.

(Testimony of Frank B. Donaldson.)

(Plaintiff's Exhibit No. 124 admitted in evidence.)

Q. (By Mr. Maxwell): Mr. Donaldson, Exhibit for Identification No. 130 was prepared subsequent to the—rather, a sheet similar to Exhibit 130, those are prepared subsequent to a conference or talk with customers of the bank as a memorandum of what occurred on that occasion, is that correct?

A. That is correct.

Q. Now, the initials at the end of each paragraph, those are the initials of the person who dictated the memorandum to the stenographer?

A. Correct.

Q. I have also handed to you, Mr. Donaldson, Exhibit No. 125. Can you state what that document is, please?

A. This is a financial statement of Hans Forster dated September 30, 1945.

Q. And is it signed, likewise, by Mr. Forster?

A. It is signed by Mr. Forster.

Q. That date is December 31, is it not?

A. Excuse me. This is dated September 30. Did I say December? [102]

Q. September 30th?

September 30, 1945.

Q. And that is likewise signed by Mr. Forster?

A. That is right.

Q. Does it contain pencilled notations, likewise?

A. Correct.

Q. And by whom are those pencilled notations entered? A. By our bank credit department.

(Testimony of Frank B. Donaldson.)

Q. Subsequent to the time the bank received the document? A. That is right.

Q. From whom did the bank receive this document? A. I cannot answer.

The Court: You mean you do not know?

The Witness: Excuse me. I do not know.

Q. (By Mr. Maxwell): Do you know when it was received by the Bank?

A. This particular statement bears no information on that, on the date received.

Q. Can you state the approximate date by which it was received in the bank in view of its relative position in your files?

A. No, sir, I cannot answer that one.

Q. Now, I have handed you Exhibit No. 126.

Mr. Maxwell: Strike that.

At this time, I will offer No. 125 in evidence.

Mr. Griffin: No objection.

Mr. LeSourd: No objection.

Mr. Keesling: No objection.

The Court: Exhibit No. 125 for identification may be admitted.

(Plaintiff's Exhibit No. 125 admitted in evidence.) [104]

* * * * *

Q. Now, Mr. Donaldson, I have handed to you Exhibits 121 to 125. Those exhibits are financial statements of Hans Forster at the end of the year 1949 and at the end of the year 1948, and February 29, 1948, on March 31, 1947, and on September 30, 1945.

(Testimony of Frank B. Donaldson.)

Did you discuss any of those net worth statements with Mr. Forster? [132]

A. It is a normal procedure to discuss statements with your borrowers as presented.

Q. Did you discuss each of these statements with Mr. Forster? A. That I cannot answer.

Q. Did you discuss any of these statements with Mr. Forster? A. Undoubtedly, I have.

Q. Which of the statements to your knowledge did you discuss with Mr. Forster?

A. Sir, I replied before I could not take each instrument in itself and be positive as to the statement in itself as to a discussion at each time.

Q. Do you have documents from which you can refresh your memory in that regard?

A. Specifically referring to each statement?

Q. Yes, sir.

(Whereupon, there was a long pause.)

A. On the December 31, 1949, statement——

Q. (Interposing) That is Exhibit No. 121?

A. 121, and on the March 31, 1947, which is Exhibit 124—those are the only two that I can positively identify as having discussed the financial statements. [133]

* * * * *

Q. (By Mr. Maxwell): Now, Mr. Donaldson, I believe that you stated that you discussed Exhibit No. 121, the 1949 financial statement of Hans Forster with Hans Forster?

The Court: Referring to 121?

Mr. Maxwell: Exhibit 121, yes, sir.

(Testimony of Frank B. Donaldson.)

Q. (By Mr. Maxwell continuing): Is that correct? A. That is correct.

Q. When did you have that discussion with Mr. Forster? A. On April 6th, 1950. [136]

The statements were discussed with L. Hicks Taylor and Hans Forster.

Q. Was there anyone else present?

A. Our Mr. Strack.

Q. Who is Mr. Strack?

A. Phillip A. Strack, Chairman of our Executive Committee.

Q. What bank?

A. The Peoples National Bank.

Q. Did you at that time discuss any of the previous financial statements which had been submitted by Mr. Forster? I believe those are Exhibits Nos. 122 to 128. I will hand those to you, if you would like to have those documents.

A. I do not believe we referred to previous statements at that time.

Q. Did you have the previous statements available during that discussion?

A. They were not present at the interview.

Q. What was the occasion for the discussion?

A. Simply to review the financial statements as of December 31, 1949,——

Q. What was the purpose of the discussion?

A. (Continuing with preceding answer) ——and to attempt to satisfy the National Bank Examiners by [137] completing a statement, as they call it,

(Testimony of Frank B. Donaldson.)

in the name of Hans Forster, showing his assets and liabilities combined.

Q. Now, I believe that you are referring to our Exhibit No. 121, is that right? A. No, sir.

Q. What exhibit are you referring to? What financial statement are you referring to?

A. It was a statement completed by the writer during 1950 combining the exhibit 121 of December 31, 1949, with his home, and other assets which were not part and parcel with this particular statement.

Q. Do you have that statement?

A. (Witness hands document to counsel.)

Q. Is that the statement to which you have reference?

A. No, sir. It was the statement completed. The figures as appeared on Exhibit 129 was the breakdown after the statement was taken.

Q. I see. Do you have then a statement that you prepared?

A. I am trying to find it, sir. It should be here, somewhere.

The Court: You used the words "prepared by the writer." You mean prepared by yourself?

The Witness: Prepared by myself, yes, sir. [138] I keep referring to credit files.

Mr. Maxwell: While the witness is examining his files, I wonder if we might have permission to pass exhibits 132 and 133 to the Jury?

The Court: You may.

(Whereupon, exhibits were handed to the Bailiff and then to the Jurors.)

(Testimony of Frank B. Donaldson.)

The Witness: I have it here, sir. It was in the wrong file.

Mr. Maxwell: I see you have a memorandum attached to that. If you would detach the memorandum.

(Whereupon, the witness separated papers and returned papers to counsel.)

Mr. Maxwell: I ask that this document, denominated at the top, "Financial Statement of Hans Forster as of date 12-31-49" be marked as Government's Exhibit next in order, marked for identification.

The Clerk: Plaintiff's Exhibit 134 marked for identification.

(Plaintiff's Exhibit 134 marked for identification.)

Q. (By Mr. Maxwell): I have handed you, Mr. Donaldson, Exhibit No. 134. I will ask you to identify that document, if you can, sir. [139]

A. This is a financial statement for Hans Forster, as of December 31, 1949, which was prepared by myself and signed by Hans Forster.

Q. When was that statement prepared, sir?

A. On April 6th, 1950.

Q. April 6th, 1950? A. Right.

Q. Where did you secure the information to make this statement?

A. In my interview with Mr. Forster.

Q. Secured it from Mr. Forster?

A. Correct.

(Testimony of Frank B. Donaldson.)

Mr. Maxwell: We will offer Exhibit 134 into evidence at this time.

Mr. Griffin: No objection.

Mr. Keesling: No objection.

Mr. LeSourd: No objection.

The Court: Exhibit 134 for identification may be admitted.

(Plaintiff's Exhibit 134 admitted in evidence.)

Mr. Maxwell: Your Honor, at this time, I would like permission to pass this document to the Jury. I would like to adduce further testimony with respect to it, however, and ask that proceedings be suspended until [140] examination of the document is had.

The Court: Do you wish to pass it at this time?

Mr. Maxwell: Yes, your Honor.

(Whereupon, document was passed to the Jurors.)

The Court: Have you any matters that could be marked, or anything like that, with this witness?

Mr. Maxwell: No, your Honor; I have not.

Q. (By Mr. Maxwell): Do you have Exhibit No. 121? A. Yes, sir; 121 and 124.

Mr. Maxwell: May I have both of them?

(Whereupon, documents were handed to counsel by the witness.)

Mr. Maxwell: Also, your Honor, I would like to request permission to show exhibits Nos. 121, 124, 122, 125, 127, 123, 128, and 126 to the Jury, at this time, being financial statements.

The Court: Those have all been admitted?

(Testimony of Frank B. Donaldson.)

Mr. Maxwell: Yes, sir.

The Court: You may.

(Whereupon, exhibits were handed to the Jurors.)

(Whereupon, there was a long pause.)

The Court: There should be some of those that you are not using. If the Bailiff would take one and [141] start with alternate No. 1, so that we can save a little time, if there are some that have more than one. I am suggesting that you sort of divide these so that they come down the one way and if two can look at one at the same time, we may save a little time.

(Whereupon, there was a long pause.)

The Court: Whenever all jurors have seen one exhibit, if you will hand it to the Bailiff.

(Whereupon, there was a long pause.)

The Court: I am going to suggest, most of you Jurors have seen some of the exhibits, have you not? I am going to suggest, Mr. Maxwell, that you proceed, and the rest of you can look at them, if you wish, while listening to the testimony.

Mr. Maxwell: Your Honor, may I request the examination be delayed until I get Exhibit 121? That has not been returned yet.

The Court: 121, is that the one you have, Mrs. Bailey?

Juror Number Eight: This is 121, your Honor.

The Court: You may continue to observe it.

(Whereupon, there was a brief pause.) [142]

Q. (By Mr. Maxwell): Mr. Donaldson, I have

(Testimony of Frank B. Donaldson.)

handed you Exhibits No. 121, the net worth statement of Hans Forster at the end of December 31, 1949, Exhibit 124, the net worth statement of Hans Forster as of March 31, 1947, and No. 134, which you have stated to be the net worth statement of Hans Forster as of December 31, 1949, which you prepared. A. Right.

Q. Now, you have mentioned discussion with Mr. Forster during which this document was prepared on April 6, 1950.

Where did that discussion take place?

A. In the Peoples National Bank.

Q. Can you specify the place a little closer; in your office, perhaps?

A. In my office, my desk.

Q. What time of the day was this?

A. I do not know, sir. I do not recall.

Q. Now, you have stated that you prepared Exhibit 134 during that conference, is that right?

A. That is correct.

Q. Now, what documents in addition to Exhibit 134—to what documents did you refer during your discussion at that time?

A. To Exhibit No. 121. [143]

Q. Exhibit No. 121, which is what?

A. The financial statement as of December 31, 1949, showing Mr. Forster's investment, or net worth, in his various enterprises.

Q. When did the bank receive that document?

A. The statement is not so marked.

(Testimony of Frank B. Donaldson.)

Q. Well, did the bank receive that prior to April 6th, 1950? A. Apparently so, yes.

Q. And you had that available at that time?

A. That is right.

Q. It was already in your file?

A. That is correct.

Q. Were there any other documents to which you had reference during that conference?

A. I do not believe so.

Q. Did you not refer to the earlier net worth statements, 122 to 128, inclusive?

A. Not at that particular time, no, sir.

Q. Referring to Exhibit 134, the net worth statement which you prepared, does that contain Hans Forster's signature? A. It does.

Q. Did he sign that document in your presence?

A. Yes, sir. [144]

Q. When was that signed?

A. On April 6th, 1950.

Q. At the termination of your discussion?

A. Well, during the discussion.

Q. To what extent did Mr. Taylor participate in the discussion, if at all?

A. On this particular statement?

Q. Yes, sir.

A. No discussion at this time.

Q. You stated he was present?

A. Prior to this particular statement being completed, if I stated so, it is incorrect. At the time this particular document, 134, was prepared by me, Mr. Taylor was not present.

(Testimony of Frank B. Donaldson.)

Q. He was not present? A. No, sir.

Q. Now, you have, previous to this time, stated Mr. Taylor was present on April 6th, 1950. It is my understanding now he was not present at that discussion, is that correct?

A. When this statement was prepared, he was not present at my desk, no.

Q. Well, was he present at your bank in company with Mr. Forster on April 6th, 1950, regardless of the preparation of that document? [145]

Mr. LeSourd: I will object to the form of that question. I think what counsel means is at some time other than the preparation of this document.

Mr. Maxwell: I believe that was my question.

Mr. LeSourd: You said "regardless."

The Court: Do you wish to restate the question?

Mr. Maxwell: Yes, your Honor.

Q. (By Mr. Maxwell continuing): On another occasion on April 6, 1950, was Mr. Taylor present?

A. Yes, when Document 121 was delivered to the bank, he would be with Mr. Forster at that time.

Q. That, you stated, was prior to April 6th, 1950? A. That is correct.

Q. Was Mr. Taylor present at the bank at all at any time on April 6th, 1950?

A. I do not believe so.

Q. Now, is there a difference between Exhibit No. 134, the net worth statement which you prepared, and Exhibit No. 121, the 1949 financial statement which was delivered to the bank?

A. Yes, sir.

(Testimony of Frank B. Donaldson.)

Q. What is that difference?

A. Do you want it in even dollar amounts?

Q. I wish what differences there are. I wish you would state what they are.

A. Well, the financial statement as submitted, the typed one, is Exhibit No. 121 as of December 31, 1949, and shows his net worth of $781,761.72.

The one prepared by myself, Exhibit No. 134, as of December 31, 1949, shows a net worth of $968,-830.88.

Q. Then there must be some difference, Mr. Donaldson, in the items making up the totals that you have there? A. That is correct.

Q. What items are different, or have been changed or added or subtracted?

A. In addition to the items as appearing in Exhibit No. 121, there is real estate consisting of his home and a farm valued at $44,000; some United States Government Bonds, fifty thousand, and cash on hand or in banks, $87,000? * * * * * [147]

Q. What are the total assets of Hans Forster shown on Exhibit 134, the item which you prepared, the net worth statement which you prepared?

A. Will you repeat the question, please?

Q. What is the total of the assets as shown on Exhibit 134, which is the net worth statement which you prepared? [155] A. $968,830.88. * * * * *

Cross Examination * * * * *

Q. (By Mr. Griffin continuing): Mr. Donaldson, when you made inquiry of Mr. Forster as to

(Testimony of Frank B. Donaldson.)

his financial affairs on these statements, as, for example, 121, 122, 123, and 124, did he not generally say he didn't know anything about them and refer you to Hicks Taylor?

A. He was always anxious to have Mr. Taylor along [186] with him to assist him in discussing the statements.

Mr. Maxwell: May it please the Court, I ask that the witness be directed to answer the question.

Mr. LeSourd: I move to strike on the grounds not responsive.

The Court: The question, whether it is responsive or not, is for the Jury. I don't think it should be stricken. If he can give a more specific answer, he should do so.

Q. (By Mr. Griffin): Will you give any detail you can, any answers that are specific?

Mr. Maxwell: May I ask that the question be repeated?

(Whereupon, second preceding question was read by the reporter.)

The Court: That is the question; now the answer.

(Whereupon, preceding answer was read by the reporter.)

The Witness: I believe that is too general a statement for me to attempt to answer.

Q. (By Mr. Griffin continuing): Would you say what the conversation was? [187]

A. There have been times——

Mr. LeSourd: (Interposing) Just a moment.

(Testimony of Frank B. Donaldson.)

Which conversation? I will object to that question, because it deals apparently with four separate conversations with four separate financial statements.

Mr. Griffin: If the Court please——

The Court: (Interposing) As I understand——

Mr. Griffin: (Continuing) If the Court please, may I make a statement first, just for a moment? I don't assume that any counsel at the defense table can object to any question asked by Counsel. That is the burden of the Government in this case. Unfortunately, we are defending an entire case with three defendants, but I don't presume for a moment that I can object to any questions that Mr. LeSourd asks any Government witness in this matter. If I can, I am perfectly happy to do it, but this is the Government's case, and I am on cross-examination of the Government's witness.

Mr. LeSourd: If your Honor please, as long as Mr. Griffin raised that question, I move the Court that the various Defendants in this case, in view of the conflict of interest that is evident, be permitted to object to questions asked by counsel for the other defendants, and be permitted to cross-examine the witnesses of the other [188] defendants.

Mr. Moriarty: The Government has no objection.

The Court: Well, cross-examination, I take it, may be only permitted in that instance if there is some antagonism on the part of the witness. In other words, if the witness is an unfriendly witness.

(Testimony of Frank B. Donaldson.)

Mr. LeSourd: Well, no, I am not claiming that at all, your Honor, but since the Defendants have adverse interests, we have the right to see that the questions are properly put, and the evidence is brought out in an orderly way, so that we can object.

The Court: Well, it would seem to me in those instances where the evidence may have some particular bearing on the particular defendant——

Mr. LeSourd: (Interposing) Yes, which it may.

The Court: (Continuing) ——it sounds reasonable that that might be permitted, and I would say however, I don't think that, generally speaking, that objections can be made in that fashion, and that more or less of a relationship to the particular question would have to appear.

Mr. LeSourd: If your Honor please, I am not prone to make objections in the trial of a lawsuit and have refrained, and will to do so, but I want to protect the rights of my client where we are opposed by another [189] defendant in this case as much as the Government.

The Court: Well, the Court, in announcing its ruling, will permit it, but does not thereby indicate that all questions on cross-examination by defendants will be subject to objection by other defendants; but you may, as you see fit, make objections and the Court will rule on them.

Mr. LeSourd: Very well.

The Court: As to the particular question here, as I understand it, the issue involved is not a par-

(Testimony of Frank B. Donaldson.)

ticular conversation; rather, it is the nature of conversations over a period of time, and, therefore, I think the very nature of it cannot call for the same specific answers, and, therefore, the Court would overrule the objection, and, of course, on your examination, if it becomes necessary to go further than ordinarily you might go in your examination, you may do so.

Mr. LeSourd: Very well. [190]

* * * * *

Q. (By Mr. Griffin continuing): That would be when you would inquire, sir, of Hans Forster as to the content, or some question in regard to the financial statements referred to in, as for example, Exhibits 121 to 125. [191]

A. We would depend upon Mr. Taylor explaining and describing the different items in the financial statement. We relied upon him very, very much on financial statements.

Q. Did you, during these years, and I think you have said that when you make this review over the week-end, that you will find that Mr. Forster and Mr. Taylor were in the bank many times together?

A. That is quite a number of times, yes, sir.

Q. Did you find during these years of this acquaintanceship with Mr. Forster that he was able to even read a financial statement? By reading, I mean to understand.

A. I do not believe he understood a financial statement really, no.

Q. Now, the financial statements, and using 122

(Testimony of Frank B. Donaldson.)

for example, bears the name, the signature, Hans Forster. What was the purpose in having the statement signed by Mr. Forster from the bank's standpoint?

A. It is required from banking procedure to have all statements submitted to be signed, and the National Bank Examiners also require that statements be signed.

Mr. Griffin: 121, I wonder if you have that?

(Whereupon, the clerk handed an exhibit to Mr. Griffin.) [192]

Mr. Griffin: Thank you.

Q. (By Mr. Griffin): Now, Exhibit 121 is the Hans Forster financial statement, December 31, 1949. The Jury, I think, have examined both this statement and 129.

Mr. Griffin: Is that correct?

Mr. Maxwell: 129 was prepared by the bank.

Mr. Griffin: Yes.

Mr. Maxwell: Yes. It is not in evidence.

Mr. Griffin: Then 134. There is another financial statement. I have it. I have it here.

Q. (By Mr. Griffin continuing): Now, I believe that the Jury have examined briefly Exhibit 121, which is the Hans Forster financial statement, December 31, 1949, and Exhibit 134, which is the financial statement that you made from the financial statement; is that correct?

A. That is correct.

Q. Now, when—I think you will have to have this in front of you to follow me. When Exhibit 121

(Testimony of Frank B. Donaldson.)

came into your possession, it showed, did it not, in the form it came in, total assets $681,761.68?

A. That is correct, 62.

Q. 62? A. That is correct. [193]

Q. Actually, the physical computation of the items—if I may have it for a moment—this is the figure $681,761.62—actually, the actual addition of those items in that statement is off $100,000?

A. Twenty cents.

Q. (Continuing) Twenty cents, isn't it; is that correct? A. That is correct.

Q. So that the actual assets shown on this statement, Exhibit 121, is $781,761.72 rather than $681,000? A. That is correct.

Q. That difference, you, of course, picked up in your preparation of Exhibit 134?

A. That is correct.

Q. To your knowledge, did Mr. Forster ever prepare, himself, any one of these statements?

A. Not to the best of my knowledge.

Q. And, to the best of your knowledge, who did prepare them?

A. We assumed that Mr. Taylor prepared all statements.

Q. Then, in Exhibit—in preparing Exhibit 134, you also—134, was it prepared—prepared by you?

A. That is correct. [194]

Q. Signed by Mr. Forster; this is April 6, 1950, and it shows total assets column $968,830.88 rather than this six hundred thousand dollars and something; so that to reach that, you added, if I under-

(Testimony of Frank B. Donaldson.)

stand your testimony, this error in addition of one hundred thousand dollars and ten or twenty cents?

A. That is correct.

Q. You added his home? A. Yes.

Q. And contiguous property?

A. That is right.

Q. And the farm? A. That is right.

Q. And certain cash in savings accounts?

A. That is correct.

Q. Now, in reaching a statement for Hans Forster did you from time to time have to review the statements of his various enterprises?

A. Did we have occasion to review them from time to time?

Q. Yes. A. Yes, sir.

Q. That would include, would it, Issaquah Dairy; right? A. Correct. [195]

Q. Alpine——

A. (Interposing) Issaquah Creamery.

Q. Issaquah Creamery? A. Yes.

Q. I can't even keep them straight. Alpine Dairy? A. Yes, sir.

Q. Alpine Ice Cream? A. Yes, sir.

Q. Perhaps Daisy Ice Cream at one time?

A. At one time.

Q. Arctic Farms, is it?

A. Arctic Gardens.

Q. And perhaps Simonson and Forster?

A. Yes, sir.

Q. In Renton Ice Cream and, incidental to that, some other concern down there?

(Testimony of Frank B. Donaldson.)

A. That is right.

Q. And Puyallup Creamery and something down there? A. Yes.

Q. Finstad? A. Finstad and Utgard.

Q. And, to reach any true evaluation——

Mr. Griffin: Strike that. [196]

Q. (By Mr. Griffin continuing): Would you find conditions that at times in reviewing these statements—of course, the statements of, let us say, Issaquah Creamery—that is a corporation—would be entirely separate from the individual?

A. That is correct.

Q. Would you find occasions where Issaquah Creamery might be substantially indebted to Alpine, or Alpine to Issaquah? A. That is right.

Q. And to determine just what the assets, actual assets, of Mr. Forster individually were, of course, when you dealt with the Issaquah Creamery you were dealing with stock of a corporation that he owned, is that right?

A. That is correct.

Q. And with Alpine, it was an individual; that was Mr. Forster? A. That is right.

Q. But with some others, it was joint enterprise on stock. Now, if Issaquah Creamery—and Mr. Forster owned all the stock in that—did he not?

A. It is my understanding, except possibly qualifying shares.

Q. Qualifying shares, but if the statement of—[197] financial statement of Issaquah Creamery showed an indebtedness to either Alpine or to Mr.

(Testimony of Frank B. Donaldson.)

Forster, and if Alpine in turn showed an indebtedness to another corporation of which Mr. Forster owned 100 per cent or 60 per cent of the stock, or whatever it may be, you had to pull out those accounts between these various enterprises to cut down the actual assets and values, didn't you?

A. We would eliminate——

Mr. Moriarty: (Interposing) Just a moment.

A. (Continuing) ——inter-company accounts.

Mr. Moriarty: Just a moment, if your Honor please. I object to that, your Honor, as not material here what the witness did, if it shows somewhere that Mr. Forster or Mr. Taylor had knowledge of this practice.

The Court: Objection overruled.

Q. (By Mr. Griffin): You did that?

A. We did in our own analysis of analyzing the credit.

Q. For example, if Issaquah Creamery—if Alpine owed Issaquah Creamery fifty thousand dollars, that was a liability of Alpine, and an asset of Issaquah? A. That is right. [198]

Q. But, inasmuch as Mr. Forster owned 100 per cent of the stock of Issaquah and was the sole proprietor of Alpine, it washed itself off as an asset one way or another, didn't it?

A. We traded in that manner, yes, sir.

Q. Did you find in your dealings with Mr. Forster that he had even any comprehension of those kind of matters in his various enterprises?

A. I do not believe he did.

(Testimony of Frank B. Donaldson.)

Q. Do you know upon whom he depended for his —all of his accounting advice?

A. We believe that he depended upon L. Hicks Taylor.

Q. And did you, as the bank, depend upon L. Hicks Taylor representing Forster in those matters?

A. On financial statement matters, yes, sir.

Q. Now, you were interrogated, you will recall, about a loan by the bank to Mr. Forster, I believe of $150,000, the funds of which he used to buy Government Bonds which in turn were left with the bank as collateral for the loans?

A. Yes, sir.

Q. I will ask you if it was not a general policy of the banks of the United States, yourself included, by the National Banking System, to make those [199] loans to customers in the aid of the Government selling United States Bonds?

A. They did assist the Government through the purchase of these bonds, that is correct.

The Court: The question was whether it was a custom. Wasn't that the question?

Mr. Griffin: I should have said "practice", rather than "custom", I think.

Q. (By Mr. Griffin): Is that correct?

A. Yes, that is right.

Q. And is it not a fact that your bank at about the time of your loan of $150,000 to Mr. Forster loaned $50,000 to L. Hicks Taylor to purchase $50,000 in Government Bonds which the bank in turn

(Testimony of Frank B. Donaldson.)

held as collateral? A. That is correct.

Q. Do you know Mr. Forster received his advice to purchase those bonds from L. Hicks Taylor?

Mr. LeSourd: If you know.

Mr. Griffin: My question was: "Do you know?"

A. It would just be hearsay, so I could not say definitely "yes". * * * * * [200]

Q. (By Mr. Griffin): During the period of time, 1945 to 1949, about which you were interrogated by counsel, and Mr. Forster and Mr. Taylor being in the bank on these matters, I will ask you if it is not a fact that you learned at that time of Mr. Forster—learned at that [205] time from Mr. Forster, in the presence of L. Hicks Taylor, of that account, savings account 198, in the Washington State Bank? * * * * * [206]

Q. (By Mr. Griffin): Do you have any date in mind in connection with the question I asked?

A. Yes, sir.

Q. Can you give about that approximate date?

A. It would be during 1949, the fall of 1949 as I would recall.

Q. And did you learn at that time about this account in the Washington State Bank and that information coming to you from Mr. Forster in the presence of Mr. Taylor?

A. The statement was made by Mr. Forster——

The Court: (Interposing) Just a minute. [207]

Mr. Griffin: The question can be answered "yes" or "no". You can explain, if the Court will permit.

The Witness: Yes.

(Testimony of Frank B. Donaldson.)

Q. (By Mr. Griffin): Now, do you want to make any further explanation?

A. There was not a differentiation between savings at Washington State Bank or Peoples National Bank. It was just a general impression that he had this amount of money in the two savings accounts which he was willing to put into the building program. * * * * * [208]

Cross Examination

Q. (By Mr. LeSourd): Yes, thank you.

Now, with regard to the conversations in the fall of 1949, Mr. Donaldson, where you said something about a general impression that Mr. Forster had money in the savings account, I simply want to get the facts straightened out as I believe it is the fact that you told me a day or so ago that, to the best of your recollection, there had been no discussion of the savings account at a time when Mr. Taylor was present; wasn't that right?

A. No, sir; you asked me if I had—if I knew if Mr. Taylor had any access to our conditions of applying to the savings account in our bank.

Q. I see; well, I must have misunderstood you then at the time.

Now, you state that it was a general impression that Mr. Forster had this money in these two savings accounts. You are speaking of the impression you gained at the time?

A. He made the statement. [220]

Q. Mr. Forster?

(Testimony of Frank B. Donaldson.)

A. Mr. Forster made the statement that he had savings in Issaquah and in our bank, at Peoples National Bank of Washington, which he would use to put the necessary financing together, along with his Government bonds, if necessary, on the new building for the Alpine Ice Cream Company. [221]

* * * * *

Q. However, speaking of Mr. Forster's personal assets now, as distinguished from the business assets [235] when on April 6, 1950, you made up Exhibit 134, which contains Mr. Forster's personal assets as well as his business assets, the figures on the personal assets you got from Mr. Forster himself, didn't you? A. That is correct.

Q. So that Mr. Forster was not relying on Mr. Taylor with respect to the figures on his own personal assets?

A. These figures were given to me by Mr. Forster so I am assuming he is the one that would be responsible for the figures as given to me at that time. * * * * * [236]

Q. Yes; did you follow the practice of sending to Mr. Forster periodically, I think monthly, statements as to the status of his various loans and guarantees he had made? A. That is correct.

Q. And those statements were sent to Mr. Forster at Issaquah, were they?

A. At Issaquah, yes.

Q. You didn't send those to Mr. Taylor?

A. No; no, not to Mr. Taylor. [240]

* * * * *

(Testimony of Frank B. Donaldson.)

Q. You testified Friday, I believe, that you believed Mr. Forster did not understand financial statements. Is that your testimony today?

A. Excuse me; I would like to have my testimony read back, if I may, because I believe I added some remarks to the fact that he did not.

Q. Well, supposing you tell us then in that connection now what your belief is with regard to Mr. Forster's understanding?

A. My belief is that he depended entirely—upon the different items that made up a financial statement, he depended upon Mr. Taylor getting those facts and figures together for him in statement form, and if we at any time asked him as to a comparison between [245] a previous statement and this one being submitted that he would have to depend upon Hicks Taylor explaining the difference in them, whether it was up or down, or whatever the progress might have been.

Q. In other words, he depended on Mr. Taylor to go back to the books and records of his corporation that Mr. Taylor had, and explain the difference? A. That is correct.

Q. On the books? A. That is correct.

Q. But now, with regard to Mr. Forster's own understanding, then is it your testimony today that Mr. Forster did understand a financial statement when he read it?

A. With Mr. Forster looking at a financial statement where net worth is shown in figures, I can't deny that he should recognize a net worth figure

(Testimony of Frank B. Donaldson.)

when he would see it. I say, when you turn around and break the different items down comprising those statements, then he had to have assistance in being able to give satisfactory answers as to what the items represented.

Q. But where the net worth statement was broken down into various items such as cash, accounts receivable, accounts payable, inventory, equipment, [246] is it your testimony that he couldn't understand those items?

A. To the extent that he depended upon others compiling those figures and giving them to him as a completed statement.

Q. Well, you are speaking now that perhaps he would depend on those figures coming from the books that were kept as to the amounts involved, but I am asking you, Mr. Donaldson, whether in your belief, which I think was the word you used on Friday, whether Mr. Forster could understand the nature of those items that were listed on these financial statements?

A. He would have to have some knowledge of the existence, somehow.

Q. I am not asking you whether he would have to have, but whether in your belief he did have.

A. Not a complete understanding of his true financial picture, no.

Mr. LeSourd: May I have 124?

(Whereupon, document was handed to Mr. LeSourd by the Clerk.)

(Testimony of Frank B. Donaldson.)

Q. (By Mr. LeSourd): Mr. Donaldson, I would like to find out—first, let me ask you this: You believe—it is your belief then that he did not have a complete understanding [247] of the meaning of the various items that were listed on the financial statement? A. Not completely.

Q. Not completely? A. No, sir.

Q. And speaking of that, you were referring to the various statements introduced here for his business during these years, were you?

A. That and others comprising our credit files over a period of years.

Q. But you are referring to this type of financial statement? A. That is correct.

Q. I am anxious to find out just what in your belief Mr. Forster did not understand about—completely about—these financial statements. I am referring to Plaintiff's Exhibit 124, which is the March 31, 1947, financial statement. The first item is cash on hand. Did he understand that completely? A. I am assuming that he would.

Q. I am not asking you to assume, but I am asking you to give us your belief as to what he did understand.

A. I believe he did understand cash on hand, yes.

Q. And the accounts receivable, do you believe he [248] understood that to be the amount owed?

A. To the extent that it was submitted to him as the accounts receivable, I am assuming he would take it as being right.

(Testimony of Frank B. Donaldson.)

Q. By that, you are simply referring to the figure itself, whether the figure was that figure or some other figure; he wouldn't be expected to bear that in mind, would he? A. I don't believe so.

Q. But, as to the nature of the item Accounts Receivable, he certainly understood that?

A. As accounts receivable, as an expression, yes.

Q. All right, inventory, do you think he understood what an inventory was?

A. I am assuming he would.

Q. And United States bonds, do you think he understood that?

A. I am sure he understood that item.

Q. And trucks? A. That is right.

Q. And equipment, the same, he knew what equipment was?

A. Yes, he would know what his equipment was.

Q. And buildings and improvements, he understood [249] that item, didn't he?

A. I am assuming.

Q. And real estate, did he understand that?

A. Sir, I don't know what I am being cross-examined—certainly, the items as appearing on the statement, he can read and understand what they are. The dollar amount opposite is what I am trying to imply, that I do not believe he understood those figures completely.

Q. Mr. Donaldson, you testified on Friday, I believe, that Mr. Forster, in your belief, did not understand these financial statements, and I simply wanted to bring out, and I think you have brought

(Testimony of Frank B. Donaldson.)

out, that he did understand these items that went on these financial statements.

A. The man would have to be ignorant if he didn't know a little bit.

Q. And Mr. Forster wasn't ignorant, was he?

A. Not to that extent.

Mr. LeSourd: Yes, thank you. That is all. [250]

Redirect Examination * * * * *

Q. (By Mr. Maxwell continuing): Did you know of a savings account in Issaquah at the time you made out Exhibit 134?

A. We knew that Mr. Forster did have a savings account at Issaquah, yes.

Q. Did you ask him how much was in the account?

A. Not at this particular time, no, sir.

Q. Do you know whether or not that is included in [254] that item? A. I do not know.

Q. I will hand you Exhibit 55, which has been identified as the ledger sheet of Account 198 and ask you to state the balance as shown in that account on December 31, 1949, which is, as I understand, the date as of which Exhibit 134 was prepared? A. As of December 31, 1949?

Q. Yes, I believe that is the date. Is that the date as of which Exhibit 134 was prepared?

A. Yes, sir.

Q. Yes; and will you give us the balance in account 198, the savings account at Issaquah, as of that date?

(Testimony of Frank B. Donaldson.)

A. Well, the amount is shown by the Issaquah record here as Exhibit No. 55, and the deposit balance would be $93,974.98.

Q. Now, I will hand you Exhibit No. 89 and ask you what that document is?

A. This is a savings account ledger sheet,—correct me—it is a certified copy of a ledger sheet of Peoples National Bank, Exhibit No. 89, in the name of——

Q. (Interposing) Yes, that is the savings account of Mr. Forster at your bank? [255]

A. (Continuing) ——Hans and Evelyn Forster.

Q. Yes; can you find the balance in that account in your bank as of December 31, 1949?

A. The balance, according to this record, is $82,898.52.

Q. Now, can you say whether or not account—the balance in Account 198 is included in the figure Cash on Hand of Exhibit 134, which is listed at $87,000?

A. Well, from these figures, it wouldn't balance out. * * * * * [256]

Recross Examination

Mr. Griffin: May I read the memo?

The Court: You may.

Mr. Griffin: Exhibit A-1, February 12, 1948, P.A.S.

Q. (By Mr. Griffin): That is Phillip A. Strack?

A. Phillip A. Strack, that is correct.

(Testimony of Frank B. Donaldson.)

Mr. Griffin: "Has had several discussions with Hans Forster and his accountant, Hicks Taylor, over financing of a new ice cream plant on their present property at 4058 Rainier Avenue. It is anticipated that the plant and equipment will cost approximately $200,000 and while they originally asked for a maximum loan they have now agreed that they can get by with a mortgage loan of $100,000. We have been supplied with financial statements as of December 31, 1947 from Issaquah Creamery Company, Incorporated, Alpine Dairy, [261] Apex Farms, Incorporated, and Finstad and Utgard, Incorporated.

Hans Forster has with the Washington State Bank, Issaquah, approximately $100,000 on deposit. He has better than $60,000 on deposit in our savings account. He owns free and clear $50,000 in United States Treasury Bonds and has securities with a market value of approximately $24,000. He will sell his securities and use some of his reserves to cover the difference between $100,000 mortgage and the cost of the building. We have asked that he give us the name of the contractor showing us the firm bid and other details of a final contract. The application was discussed at our executive directors' committee on February 10, and they approved our loaning one hundred thousand dollars, payable twenty-five thousand dollars a year, secured by real estate and chattel mortgage on the new plant. We have attempted to discourage Hans Forster from building at this time, but he has a number of logical

(Testimony of Frank B. Donaldson.)

arguments, and we finally committed to go along on the [262] above basis because of our past experience with Hans Forster and on the strength of his financial condition. F.B.D."

Q. (By Mr. Griffin): That is yourself?

A. That is correct.

Q. So that on February 12th, on or about the period February 10 to February 12, 1948, Hans Forster in the presence of Hicks Taylor advised you and your bank that he had $100,000 on deposit in the Washington State Bank at Issaquah, is that correct? A. That is correct. * * * * * [263]

Direct Examination

The Court: The question is, how many times was he in the bank to the best of your recollection from [269] the information you have, Mr. Donaldson, between the dates December 31, 1944, to December 31, 1949?

A. According to the records from our credit file from the period of December 31, 1945 to December 31, 1949——

Q. (By Mr. Maxwell continuing): 1944, I believe it would be.

A. Excuse me; 1944 through 1949, Mr. Forster discussed items of banking in our credit files 68 times.

Q. And, on those occasions, how many times was he accompanied by Mr. Taylor?

A. According to our files, or the comment, Mr. Taylor was with him 13 times.

Mr. Maxwell: No further questions. * * * * *

RAYMOND J. SCHNEIDER

a witness called for and on behalf of the Plaintiff, upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: I want your full name and the spelling of your name, please.

The Witness: Raymond J. Schneider.

The Clerk: S-c-h-n-e-i-d-e-r (spelling)?

The Witness: Yes, sir.

Mr. Obenour: Would you state your name, please, for the jury?

The Witness: Raymond J. Schneider.

Q. (By Mr. Obenour): And where do you live, Mr. Schneider? A. Renton, Washington.

Q. And what was your occupation?

A. As what time?

Q. What is your occupation now?

A. President of the South End Beverage Company.

Q. And have you ever been affiliated with Renton Ice and Ice Cream Company? A. Yes, sir.

Q. And when would that—do you still have such a relationship?

A. I had until the name was changed of the company.

Q. And what was your position with the Renton Ice and Ice Cream? A. President and manager.

Q. And when was the name of the company changed? A. January, 1953, I believe.

Q. And is that company still in evidence?

A. Yes, sir.

(Testimony of Raymond J. Schneider.)

Q. And you are presently affiliated—what is the name of it—South End?

A. Beverage Company.

Q. And who else is in that company with you?

Mr. Griffin: Objected to as immaterial.

The Court: I can't tell. If you state it is material, Mr. Obenour, the Court will have to act on your representation.

Q. (By Mr. Obenour continuing): Does Mr. Forster have any interest in the South End Beverage Company? A. Yes, sir.

Q. And is this the same company that was formerly Renton Ice and Ice Cream, and is now South End Beverage? A. That is right.

* * * * * [279]

Q. Now, what was your practice then as to Issaquah Creamery? How—would you make purchases from them? A. Yes, sir.

Q. What would you purchase from them?

A. Ice cream mix, mainly. [299]

Q. How would those transactions be handled in the manner of keeping the account?

A. The driver would bring the mix, and give us an invoice upon it, and we would put it in the file. We might have three or four in a two-week period. Then we would get a statement from them, and I would check the purchase against the amount of the statement so that we knew it was correct and write a check which I mailed to the Issaquah Creamery and on the statement record the check number and the date it was paid.

(Testimony of Raymond J. Schneider.)

The Clerk: Plaintiff's Exhibit No. 200 marked for identification.

(Plaintiff's Exhibit No. 200 marked for identification.)

Q. (By Mr. Obenour): I hand you what has been marked for identification as Plaintiff's Exhibit 200 and ask if you can identify those, please?

A. They all seem to be statements with invoices attached just as I have been telling. It was exactly that procedure. Here is the statement we got every two weeks and attached to it the invoices and shipments we would have in the two weeks.

Q. From what company?

A. Issaquah Creamery, mainly. There is one in here, I [300] believe, from someone else. That is from—this one says—Highland Drugstore. I don't know whether it is in regard to one of the statements or not. There is the amount for that. This is 3-23-44, Highland Drugstore, Renton Highlands, March 20th, a list of syrups that we sold them.

Q. Was that included in the account to Issaquah? A. $193.44. I don't see it on there.

Q. That was an inadvertence?

A. Yes, I think so.

Mr. Obenour: May we remove that, if the Court please? It was an inadvertence.

The Court: It hasn't been admitted. You may remove it, if you wish. Do Counsel wish to see it before it is removed?

Mr. Griffin: No, your Honor.

Mr. LeSourd: No, your Honor.

(Testimony of Raymond J. Schneider.)

Q. By Mr. Obenour): The rest of them were what then?

A. They are all purchases and payments, Issaquah Creamery, for Mix.

Q. And the check is the check that paid that invoice, is that correct, on that statement?

A. That is right. I believe they all correspond, so far as I can see, yes.

Mr. Obenour: All right. May I have it, please? We offer 200, if the Court please.

Mr. Griffin: We have no objection.

* * * * * [302]

Q. (By Mr. Obenour): I hand you Plaintiff's Exhibit 199, sub A through [314] J, inclusive, and ask you to refer to your check register for the year 1945, particularly the month of April, 1945.

A. Yes, sir.

Q. Directing your attention to April 11, 1945, do you find an entry there pertaining to an item of two thousand dollars to yourself?

A. Yes, sir.

Q. And would you explain that transaction, please?

A. Yes. I drew two thousand dollars, for which I wrote a check to myself, and signed a note which showed payment—it was a note that I took as an advance for that year. I signed a note for it.

Q. And that was an advance on your own salary? A. Yes.

Q. Now, directing your attention to your books there for April 17, 1945, particularly as to checks

(Testimony of Raymond J. Schneider.)

3180, 3181, and 3182. What does your record show as to those entries?

A. You want check No. 3180 to start with?

Q. Right.

A. That is a check payable to myself.

Q. On what date, please?

A. On April 17th.

Q. And in what amount? A. $317.

Q. And what is check 3181? [315]

A. Check payable to Mazie R. Basket for $2,317.

Q. And 3182?

A. Check payable to myself for $1,158.50.

Q. And 3183?

A. Check payable to Mazie R. Basket for $1158.50.

Q. Who drew those checks?

A. I drew them.

Q. And who filled in the check register?

A. I did.

Q. And who made—what is the distribution? How was that charged up? A. Notes payable.

Q. Pardon? A. Notes payable.

Q. Notes payable? A. Yes.

Q. And who made that charge?

A. On the distribution side?

Q. Yes.

A. I think the office girl.

Q. Now, what were those notes payable; what was that in notes payable? Would you explain that transaction?

A. This was in April. Well, I would say that

(Testimony of Raymond J. Schneider.)

it was the balance of our salary—this is April—the year is what I wanted to make sure of. [316]

Q. Doesn't the books show all that?

A. This book is August 1, 1944, to May 26, 1945, so that this would be April in 1945.

Q. Now, did you have notes that you had received from the company at that time?

A. I think so.

Q. What were they for?

A. Balance of salary of 1944.

Q. And what was the note you had?

A. The note that I had?

Q. Yes.

A. Balance of salary for 1944.

Q. In what amount?

A. $317 if I am right; that is what this indicates.

Q. And who made the entry there?

A. The entry in the checkbook is made by me.

Q. And the distribution?

A. Office girl, I think.

Q. And who directed the manner in which they were to be entered? A. Mr. Taylor.

Q. Mr. Taylor entered it? A. Yes.

Q. Now, how did that enter into the note of two thousand dollars that you withdrew in April 11th?

A. This would appear to be the balance of my salary. I had drawn the two thousand. This would be the balance of it.

Q. For actual notes prepared?

A. I believe so.

(Testimony of Raymond J. Schneider.)

Q. And who signed them?

A. They would be signed by me and possibly somebody else.

Q. Do you have a recollection of such notes being made?

A. I have of some years. I wouldn't be sure about this year.

Q. How was this matter set up then as to these notes? A. How was it set up?

Q. Yes, how would they set up this system of writing notes to you and Mr. Basket?

A. If the balance of our salary was not paid at the end of the year, we received notes for the balance of the salary until we had money to pay them.

Q. For what reason did you receive notes at the end of the year?

A. Probably because there wouldn't be cash in the bank.

Q. So that if your cash was low, you would not pay off the balance of your salary at the end of the year? [318] A. Quite right, yes.

Q. I hand you what has been marked for identification as Plaintiff's Exhibit No. 203 and ask if you can identify those, please?

A. They are three of the checks in question.

Q. Which three are those, please?

A. The first one is made to me that you hand me for $1158.50.

Q. What check number is that, please?

A. 3182; the second one is 3183, payable to Mazie R. Basket for $1158.50. The third one is 3181 pay-

(Testimony of Raymond J. Schneider.)

able to Mazie R. Basket for $2,317.00.

Mr. Obenour: I might offer them at this time, if the Court please.

Mr. Griffin: We have no objection.

Mr. LeSourd: We have no objection.

Mr. Keesling: No objection.

The Court: Exhibit 203 for identification may be admitted.

(Plaintiff's Exhibit No. 203 admitted in evidence.)

Mr. Obenour: I would read them to the Court at this time.

The Court: You mean to the Jury?

Mr. Obenour: Yes, if the Court please.

The Court: You may. [319]

Mr. Obenour: Check 3181, Renton Ice and Ice Cream Company, April 17, 1945, pay to the order of Mazie R. Basket, $2,317.00, Renton Ice and Ice Cream Company, and then the stamp protector of the same amount, Two Thousand Three Hundred and Seventeen Dollars, signed R. J. Schneider and Hans Forster, and directed to the Renton Branch of the Peoples National Bank and the endorsement on that is Mazie R. Basket.

3183 is a check, Renton Ice and Ice Cream Company, Renton, Washington, April 17, 1945, pay to the order of Mazie R. Basket, $1,158.50, signed R. J. Schneider, Hans Forster, and it is directed to the Renton Branch of the Peoples National Bank.

And 3182 is a check of the Renton Ice and Ice Cream Company of Renton, Washington, April 17,

(Testimony of Raymond J. Schneider.)

1945, pay to the order of R. J. Schneider, $1,158.50, signed R. J. Schneider and Hans Forster.

And Mr. Schneider's check, the last one, is endorsed R. J. Schneider, and bears the stamp endorsement of Pay to the Order of Issaquah State Bank, Issaquah, Washington, and Issaquah Creamery Company, Alpine Dairy Products, and Hans Forster.

And the check to Mrs. Basket in the amount of $1,158.50 bears the endorsement Mazie Basket and Issaquah State Bank, Issaquah, Washington, stamped endorsement, [320] Pay to the Order of Issaquah State Bank, Issaquah, Washington, Issaquah Creamery Company, Alpine Dairy Products, and Hans Forster.

Q. (By Mr. Obenour): Now, Mr. Schneider, would you please explain what happened to the check in the amount of $1158. and the check to Mrs. Basket in the same amount as to the matter of the *enforcement*?

Mr. Cox: If he knows.

The Court: I assume that he will not answer unless he knows.

A. I know what happened to mine.

Q. (By Mr. Obenour): What happened to yours?

A. I endorsed it and mailed it to Hans Forster.

Q. And why did you do that?

A. As instructed by Mr. Taylor. It was for work that Mr. Forster had done for the company.

Q. And——

(Testimony of Raymond J. Schneider.)

Mr. Cox: I didn't get that last answer.

The Court: Mr. Reporter, read the answer.

(Whereupon, preceding answer was read by the reporter.)

Q. (By Mr. Obenour): Now, what was that check that you received charged to in the check register? [321] A. Notes payable.

Q. And whose notes payable was that credited against? A. Mine, I would think.

Q. To your knowledge, in keeping with that book was this income that was charged to the salary of six thousand dollars you were to receive?

A. Yes, sir.

Q. And the Basket check, would you describe the comparison of the amounts of—you said you had received $317? A. Yes, sir.

Q. And you had previously received two thousand dollars? A. Yes.

Q. Would that make the total of your interest in this $2,317? A. Yes.

Q. And is that the amount that Mrs. Basket received? A. Yes.

Q. And this was, I believe you stated, after the death of Mr. Basket? A. Yes.

Q. And the amount of $1,158.50 is what proportion to yours, then?

A. Half of it, I believe. Let me see—yes, half.

Q. And the endorsement of Mrs. Basket's check is what?

Mr. Cox: If the Court please, that has already been read to the jury.

(Testimony of Raymond J. Schneider.)

The Court: Pardon?

Mr. Cox: That has already been read to the jury.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Mr. Obenour: I will rephrase it, if the Court please.

Q. (By Mr. Obenour): Directing your attention to the endorsement, can you account for the endorsement on the back of Mrs. Basket's check in the amount of $1,158 in accordance with the directions received by you from Mr. Taylor?

Mr. Cox: I object unless he knows what Mrs. Basket did, and what instructions she received.

The Court: If he doesn't know, he should not state. You may only state what you know, and not what you presume.

Now, if you have any knowledge, you may answer.

The Witness: Would you try that question again?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.) [323] A. Yes.

Q. (By Mr. Obenour): And what is it, please?

A. She did the same thing as I did. She endorsed it, and then it was re-endorsed by Hans Forster, and his companies.

Q. Now, who directed that that be done?

Mr. Cox: If he knows.

A. The direction came from Mr. Taylor.

(Testimony of Raymond J. Schneider.)

Q. (By Mr. Obenour): Now, how was this amount reached? A. Sir?

Q. How was the amount of these checks determined?

A. The balance of our salary here in each case, mine and Mrs. Basket's, was divided in half, as I see it here, and that half went, one half of it went, to Mr. Forster.

Q. Here—who computed the amounts that those checks were made out in? A. Mr. Taylor.

Q. And those were the amounts that made up the total then of your income and the income of Mrs. Basket, is that correct?

A. This was the balance of our past salary after what we had drawn, I believe.

Q. And that was for the year that you received in [324] 1945?

A. (Witness nodded in the affirmative.)

Q. Now, did you pay income tax yourself on the total amount of six thousand dollars in that year? A. I think I did.

Q. Did you receive the full amount——

The Court: (Interposing) "That year,"—you mean 1944?

Mr. Obenour: Yes, sir; 1944, pardon me.

Q. (By Mr. Obenour continuing): Were you on a calendar or fiscal year? A. Fiscal year.

Q. And the same as your company?

A. Oh, no; not personally.

Q. Yourself? A. Calendar year.

Q. And did you for the year of 1944 take the

(Testimony of Raymond J. Schneider.)

full amount of six thousand dollars in your own income tax?

A. I couldn't say without seeing the return.

Q. Calling your attention to August 27, 1945, on your entry there. A. Yes?

Q. August 27, 1945. A. Yes, sir. [325]

Q. You have—calling your attention to—check No. 2426 and 2427? A. Yes, sir.

Q. Would you please state what those checks are?

A. The first one is to R. J. Schneider, balance salary, $3600; the second one is payable to Mazie Basket, $4,110.00.

Mr. Griffin: I think the record should show that the witness is now reading, if I am correct, from 199-A.

The Court: Is it marked there?

Mr. Griffin: 199 something.

The Witness: It isn't "A," I don't believe. "C."

Mr. Griffin: "C"?

The Witness: "C."

The Court: All right, and the numbers on the check refer to the numbers appearing in that check register, is that correct?

The Witness: That is correct.

The Court: Now, the first check was 2426?

The Witness: 2426, yes, sir.

The Court: And the second one was 2427?

The Witness: 2427.

The Clerk: Plaintiff's Exhibit No. 204 marked for identification. [326]

(Testimony of Raymond J. Schneider.)

(Plaintiff's Exhibit No. 204 marked for identification.)

Q. (By Mr. Obenour): Would you please describe dates and the amount and the payee of those checks, please?

A. The date is August 20th, the first was made to myself, R. J. Schneider, balance salary, No. 2426, for $3600.

Q. Now, who drew that check?

A. Mr. Taylor.

Q. And who filled out the check register, or made distribution? Or, rather, who filled out the check register? A. Mr. Taylor.

Q. Who made distribution? A. I did.

Q. And to what was the distribution made?

A. Wages and salary.

Q. And who determined it should be charged to wages? A. Mr. Taylor.

Q. And to whose salary account was it charged?

A. My own.

Q. And was this the balance then that you say you had drawn three hundred dollars a month for twelve months preceding? [327] A. Yes.

Q. And this was the balance then of the amount coming to you? A. Yes, sir.

Q. Now, as to 2427, would you describe that?

A. The same date, 8-20, payable to Mazie Basket, check No. 2427, $4,110.

Q. And who drew this check?

A. Mr. Taylor.

Q. And who filled the check register?

(Testimony of Raymond J. Schneider.)

A. Mr. Taylor.

Q. And who made distribution? A. I did.

Q. And to what was that charged?

A. Wages and salary.

Q. And whose wages was that charged to?

A. Mazie Basket's.

Q. And that also brought her total up then to the same as your own?

A. Yes, that is right.

Q. I would ask if you can identify two checks identified as Plaintiff's Exhibit No. 204 for identification, please?

A. Those are the two checks we just spoke of.

Q. Are those the checks which you have just described? [328] A. Yes, sir.

Mr. Obenour: We will offer them, if the Court please.

Mr. Griffin: No objection.

Mr. LeSourd: No objection.

Mr. Keesling: No objection.

The Court: Exhibit 204 for identification may be admitted.

(Plaintiff's Exhibit 204 admitted in evidence.)

Mr. Obenour: I would read these, if the Court please, to the Jury.

Also Renton Ice and Ice Cream Company, on No. 2427, Renton, Washington, August 27, 1945, pay to the order of Mazie Basket, $4,110, signed R. J. Schneider, L. Hicks Taylor, and directed to the Renton Branch of the Peoples National Bank: 2426, Renton Ice and Ice Cream Company, Renton,

(Testimony of Raymond J. Schneider.)

Washington, August 27, 1945, pay to the order of R. J. Schneider, thirty-six hundred dollars, signed R. J. Schneider, L. Hicks Taylor.

Mr. Schneider's check is endorsed R. J. Schneider, and Mrs. Basket's check is endorsed Mazie Basket.

Q. (By Mr. Obenour): Would you tell the Court, please, what you did [329] with those checks? A. They were cashed at the bank.

Q. What bank?

A. Peoples National Bank of Renton.

Q. And what did you do with—how did you get Mrs. Basket's check?

A. Mrs. Basket endorsed it and gave it back to me.

Q. And what did you do then? Did you cash her check as well as your own?

A. I think I did.

Q. And what did you do with the proceeds then of the total amount of $7,710?

A. It is possible I bought cashier's checks. [330]

* * * * *

Q. (By Mr. Obenour): At the recess, I asked you what you had done with the two checks of $3600 to yourself and $4110 to Mazie Basket in the total of $7,710, and I believe you stated that you had cashed them at the Renton Bank?

A. Yes, sir.

Q. And what did you do with the proceeds of that?

A. I think I bought cashier's checks with them.

(Testimony of Raymond J. Schneider.)

Q. I hand you what has been marked for identification as Plaintiff's Exhibit 77 and identified—or is it admitted—it has been admitted—pardon me—and identified as an order for cashier's check and a cashier check and ask you if you can identify those, yourself, please? [331] A. Yes.

Q. And what is that, please?

A. The one is the order for a cashier's check signed by me at the bank.

Q. On what date, please?

A. On August 29, 1945.

Q. And in what amount? A. $2,755.

Q. And what is the other document there?

A. That is the check itself.

Q. And to whom is it addressed?

A. Hans Forster.

Q. And in what amount? A. $2,755.

Q. And what date? A. August 29, 1945.

Q. And you received the original of that cashier's check? A. Yes, sir.

Q. And what did you do with it?

A. I mailed it to Mr. Forster.

Q. And for what reason did you mail it to Mr. Forster?

A. I was so instructed by Mr. Taylor.

Q. Now, in April, 1945, two checks totalling $2,317 [332] were sent to Mr. Forster and in August, 1945, that cashier's check in the amount of $2,755 was sent to Mr. Foster, totalling $5,072 paid to Mr. Forster in 1945.

(Testimony of Raymond J. Schneider.)

Why were not checks written directly to Mr. Foster for those amounts?

A. I couldn't say why they weren't.

Q. They were charged to your salary and to the salary of Mrs. Basket? A. Yes.

Q. Did Mr. Forster have a salary account?

A. No, sir.

Q. Was he credited with any salary at your company? A. No, sir.

Q. I hand you what has been marked for identification as Plaintiff's Exhibit 25 which has been identified as the income tax return for the Renton Ice and Ice Cream Company for the fiscal year 1945.

First, when was the fiscal year for your company?

A. July 31st was the end of our year.

Q. I will ask you if you can identify that, please? A. Yes, sir.

Q. And whose signatures are on the bottom of that tax return?

A. R. J. Schneider, president; L. Hicks Taylor, secretary. [333]

Q. Is that your signature? A. It is.

Q. And is that the tax return of the Renton Ice and Ice Cream Company for the fiscal year 1945—of your corporation? A. Yes; yes, it is.

Mr. Obenour: I will offer Plaintiff's Exhibit 25 at this time.

Mr. Griffin: No objection.

Mr. LeSourd: No objection.

Mr. Keesling: No objection.

(Testimony of Raymond J. Schneider.)

The Court: Exhibit 25 for identification may be admitted.

(Plaintiff's Exhibit No. 25 admitted in evidence.)

Q. (By Mr. Obenour): I call your attention, please, to the item of Officers' Salary on the first page of Exhibit 25, and would you read that amount, please? A. Officers' Salary, $6,000.

Q. And calling your attention to the inner page, the main section, the item Schedule F, compensation of officers there, what is that item, please?

A. R. J. Schneider, Renton, Washington, president, entire time devoted to business, one-third common stock, [334] amount of compensation six thousand dollars.

Q. Did you declare six thousand dollars on your own tax return? A. I think so.

Q. Did you receive six thousand dollars from Renton Ice and Ice Cream Company in the year ending that this represented, for the fiscal year 1945?

Mr. Cox: If the Court please, the checks are in evidence for what he received.

The Court: Objection overruled.

A. I think so.

Q. (By Mr. Obenour): Did you receive the entire amount of six thousand dollars?

The Court: (Interposing): Did you say you thought so?

The Witness: I think so, yes.

Q. (By Mr. Obenour continuing): Did you re-

(Testimony of Raymond J. Schneider.)

ceive the entire amount of six thousand dollars for your own use during that year?

A. I received that amount.

Q. And does that include the amount then that you have stated you paid back to Mr. Forster?

A. It would include that amount.

Q. And did you pay taxes then on the entire six [335] thousand dollars? A. Yes.

Q. And by whom was that tax paid?

A. I believe it was paid by the company.

Q. The entire amount was paid by the company?

A. Now, I will have—they were withholding tax each time on the amount that I drew by the month.

Q. And the tax was withheld in the entire amount from your salary? A. Yes.

Q. For six thousand dollars?

A. The amount I drew by the month.

Q. Yes.

A. Whatever that amount was, yes.

Q. Did you make any inquiry as to whether or not Mr. Taylor or Mr. Forster—as to why you should enter six thousand dollars on the tax return of the corporation of which you were president, which in fact included money to Mr. Forster?

Mr. Griffin: I object to the form of the question; no question as to Mr. Forster. Compound.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Did you make any inquiry of Mr. Forster as to why on the tax return you signed as president [336] and in-

(Testimony of Raymond J. Schneider.)

cluded the amount six thousand dollars which included money paid to Mr. Forster?

A. I don't remember I did.

Q. Did you make any such inquiry of Mr. Taylor? A. I don't remember that I did.

Q. For what reason did you include that amount on your tax return without making any inquiry as including the amounts paid to Mr. Forster?

A. I didn't make out the return.

Q. Who made out the return?

A. Mr. Taylor.

Q. Who made out your return?

A. Mr. Taylor.

Q. Did you sign the tax return of your own—of the corporation and your own tax return for that year? A. I think I did. [337]

* * * * *

Q. (By Mr. Obenour): I hand you what has been marked for identification as Plaintiff's Exhibit No. 206 and ask if you can identify those, please?

A. They are the two checks we were just discussing.

Mr. Obenour: I ask that they be admitted into evidence, if the Court please.

The Court: You discussed three checks. Are there three there?

Mr. Obenour: No, sir; we have only the two.

Q. (By Mr. Obenour): Would you describe those checks, please? [344] A. Yes.

Q. Pardon me?

(Testimony of Raymond J. Schneider.)

A. One is to Mazie Basket, for $2,892.60; and R. J. Schneider, $2,191.

Mr. Griffin: We have no objection.

Mr. LeSourd: No objection.

Mr. Keesling: No objection.

The Court: Exhibit 206 for identification may be admitted.

(Plaintiff's Exhibit 206 for identification admitted in evidence.)

Q. (By Mr. Obenour): To whose salary accounts were these checks charged, please?

A. Mazie Basket, R. J. Schneider.

Q. Your check for $2,191 was charged to your account? A. Yes, sir.

Q. And Mrs. Basket's for $2,892.60 was charged to her account? A. That is right.

Mr. Obenour: Pardon me, if the Court please, I would read these checks to the jury.

The Court: You may.

Mr. Obenour: 3397, check of Renton Ice and Ice Cream [345] Company, Renton, Washington, September 7, 1946, pay to the order of Mazie Basket, $2,892.60, signed R. J. Schneider, L. Hicks Taylor, and directed to the Renton Branch of the Peoples National Bank, Renton, Washington, and endorsed Mazie Basket and R. J. Schneider, check 3396, of Renton Ice and Ice Cream Company, Renton, Washington, pay to the order of R. J. Schneider, $2,191, signed R. J. Schneider, L. Hicks Taylor, directed to the Renton Branch of the Peoples National Bank, and endorsed R. J. Schneider.

(Testimony of Raymond J. Schneider.)

Q. (By Mr. Obenour): Would you please tell what you did with, first, of all, Mrs. Basket's check? Is that your endorsement upon it?

A. Hers first and then mine.

Q. And then how did you happen to come into possession of Mrs. Basket's check?

A. She endorsed it and gave it back to me.

Q. And what did you do then with those two checks?

A. They were not deposited, so I would say I cashed them.

Q. Where would they be cashed, do you recall?

A. Yes, Peoples National Bank of Renton.

Q. And what did you do with the proceeds, please?

A. I think at that time that there were cashier checks [346] *brought* again.

Q. Now, when you say cashier's checks, how many cashier's checks would you buy?

A. I wouldn't know without seeing them.

Q. I hand you what has been admitted into evidence as Plaintiff's Exhibit 76. Can you say what that is, please?

Mr. Griffin: What was that number again, please?

The Court: 76.

Mr. Obenour: 76.

A. That is a cashier's check on the Peoples National Bank of Renton, dated September 12, 1946, for one thousand eight hundred and thirty-three dollars and fifty-three cents.

(Testimony of Raymond J. Schneider.)

Q. (By Mr. Obenour): Payable to whom?

A. Hans Forster.

Q. And the endorsement on the back, on the back of——

A. (Interposing) Hans Forster endorsement.

Q. And is that one of the cashier's checks you purchased with the proceeds of the two checks totalling $5,083.60?

A. It seems quite reasonable. I think it is.

Q. Is that the check that you purchased with the proceeds, to the best of your recollection? [347]

A. Yes, sir.

Q. And what did you do with that check?

A. Mailed it to Mr. Forster.

Q. Why was Mr. Forster given the check in the amount of eighteen hundred—what was it?—pardon me—what is the amount? A. $1833.53.

Q. And why was Mr. Forster sent that check of $1,833.53?

A. Mr. Taylor advised us to do that.

Q. And does that include the proceeds then of the checks which were charged against the salary account of yourself and Mrs. Basket?

A. It was the end of the year. I would think that.

Q. And why was not Mr. Forster written a check for the amount of $1833.53?

A. I wouldn't know why we paid him that amount. We had no salary, I know, for him.

Q. Who determined it? A. Mr. Taylor.

Q. The exact amount? A. Yes, sir.

(Testimony of Raymond J. Schneider.)

Q. There was no salary account?

A. No, sir.

Q. Did you make any inquiry of Mr. Forster as to why [348] you should send him that check?

A. No, sir.

Q. Did you make any inquiry of Mr. Taylor as to why you should send him that check?

A. I did the first one or two.

Q. Did you after that? A. I doubt it.

Q. For what reason?

A. It just seemed to be the way he was handling our affairs.

Q. I hand you what has been marked for identification as Plaintiff's Exhibit 26 which has been identified as the income tax returns for the Renton Ice and Ice Cream Company for the calendar year of 1946 and ask you if you can identify that as your signature there, please? A. Yes, it is.

Q. And what return is that?

A. That is for the year ending July 31, 1946.

Q. And whose signatures are on the bottom?

A. R. J. Schneider, president; L. Hicks Taylor, secretary.

Mr. Obenour: I offer it in evidence at this time, if the Court please.

Mr. Griffin: No objection.

Mr. LeSourd: No objection. [349]

Mr. Keesling: No objection.

The Court: Exhibit 26 for identification may be admitted.

(Testimony of Raymond J. Schneider.)

(Plaintiff's Exhibit No. 26 admitted into evidence.)

Q. (By Mr. Obenour): Calling your attention to the first page of Exhibit 26, the item Officers' Salary, will you read that, please?

A. Officers' Salary, six thousand dollars.

Q. And I call your attention to the inner page of the main sheet, Schedule F, will you read that item, please?

A. R. J. Schneider, Renton, Washington, president, entire time devoted to business, one-third common stock, amount of compensation six thousand dollars.

Q. Did you declare the amount of six thousand dollars on your own tax return for that year?

A. I think so.

Q. Did this item of six thousand dollars on the tax return of the Renton Ice and Ice Cream Company include the amount you stated was paid to Mr. Forster? A. I think so.

Q. Who prepared this tax return?

A. Mr. Taylor. [350]

Q. Who prepared your tax return for that year?

A. Mr. Taylor.

Q. Did you make any inquiry of Mr. Forster as to why you should show on the corporation income tax return of which you were president, an amount of money paid to Mr. Forster?

A. No, I just signed it.

Q. Calling your attention to which ever of 199, if you please, would have the date of September 10,

(Testimony of Raymond J. Schneider.)

1947—would you please tell the Court what the exhibit is, please? A. 199-F.

Q. Referring now to the date of September 10, 1947, particularly checks 4711, 4712 and 4713, do you have those items? A. I have them, yes.

Q. Would you describe check 4711, please?

A. Dated September 10, made payable to R. J. Schneider, No. 4711, amount three thousand dollars even.

Q. And who drew that check?

A. Mr. Taylor.

Q. And who filled out the check register?

A. Mr. Taylor.

Q. Who made distribution?

A. Office girl. [351]

The Court: When you say "distribution," are you talking about written—showing on the account book?

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour): The item to which it is charged, the term "distribution" is the term you used, Mr. Schneider?

A. That is right, the account it would go to in the permanent ledger book, or whatever it is.

Q. And who made this distribution?

A. The office girl.

Q. And to what account was it charged?

A. Salary and wages.

Q. Whose salary and wages account?

A. Well, that one would be to mine.

Q. And at whose direction was such distribu-

(Testimony of Raymond J. Schneider.)

tion to salary account made? A. Mr. Taylor.

Q. Now, 4712, will you describe that check, please?

A. The same date, check payable to Mazie Basket and the amount is $3,960.00.

Q. Similarly, who drew and registered that check?

A. Mr. Taylor and the office girl.

Q. And the distribution was the same as the other? A. Yes, sir.

Q. And to what account was that check charged?

A. Wages and salaries.

Q. Of whom? A. Mazie Basket.

Q. Now, what is check 4713?

A. Check of the same date, September 10, payable to L. Hicks Taylor, 4713, six hundred dollars.

Q. And who drew that check?

A. Mr. Taylor.

Q. To what account is that charged?

A. Well, it is that column that includes accounts payable and donations and advertising and so on; miscellaneous.

Q. At that time, did Renton Ice and Ice Cream Company owe Mr. L. Hicks Taylor six hundred dollars. A. Not that I know of.

Q. Was that amount received in addition to the fifty dollars a month received in the preceding year?

A. Yes.

Q. I hand you——

Mr. Obenour: Will you mark it first, please, as one exhibit?

(Testimony of Raymond J. Schneider.)

The Clerk: Plaintiff's Exhibit 207 marked for identification.

(Plaintiff's Exhibit No. 207 marked for identification.) [353]

Q. (By Mr. Obenour continuing): I hand you what has been marked for identification as Plaintiff's Exhibit 207; can you identify that, please?

A. Those are the two checks signed by myself and Mr. Taylor, one for three thousand to me, and one for three thousand nine hundred sixty dollars to Mazie Basket, that were just being discussed.

Mr. Obenour: I ask that that be admitted into evidence, if the Court please.

Mr. Griffin: No objection.

Mr. LeSourd: No objection.

Mr. Keesling: No objection.

The Court: Exhibit 207 for identification may be admitted.

(Plaintiff's Exhibit No. 207 received in evidence.)

The Clerk: Plaintiff's Exhibit 208 marked for identification.

(Plaintiff's Exhibit No. 208 marked for identification.)

Mr. Obenour: If the Court please, I would read these to the jury.

The Court: You may.

Mr. Obenour: Check No. 4711, dated September 10, [354] 1947, to R. J. Schneider, $3,000, signed R. J. Schneider, L. Hicks Taylor, and endorsed R. J. Schneider; 4712, check, September 10, 1947,

(Testimony of Raymond J. Schneider.)

to Mazie Basket, $3,960, signed R. J. Schneider and L. Hicks Taylor.

Q. (By Mr. Obenour): Handing you Plaintiff's Exhibit 207, what did you do with those checks, please?

A. The fact that they were cashed at the bank indicates, I believe, that there were cashier's checks bought with them, probably.

Q. I hand you what has been marked for identification as Plaintiff's Exhibit 75 and it has been identified as a cashier's check and an order for a cashier's check of the Renton Bank; can you identify that?

A. Yes, it is a cashier's check on the Renton Bank dated September 12, 1947, payable to Hans Forster for $2,685.

Q. Now, at that time, did you also pay checks to yourself and to Mrs. Basket?

A. I think so.

Q. Of similar amounts? A. Yes.

Q. And what did you do then with that twenty-five hundred — $2,685.00 — cashier's check, Mr. Schneider? A. I mailed it to Mr. Forster.

Q. For what reason did you mail it to Mr. Forster? A. Instructions of Mr. Taylor.

Q. For what reason—were you given any reason as to why you should send it to Mr. Forster?

A. Yes, that he should share in our salary because of the fact that he was also earning money for the firm or doing part of the work.

Q. They were charged—the entire amount,

(Testimony of Raymond J. Schneider.)

though, was charged to the wage account of yourself and Mrs. Basket? A. Yes.

Q. I hand you Plaintiff's Exhibit 27 for identification, which has been identified as the income tax return for Renton Ice and Ice Cream Company for the year 1947. Can you identify that as to signature? A. It is mine.

Q. And whose other signature is that?

A. L. Hicks Taylor, Treasurer and Secretary.

Q. Is that the tax return of your corporation for that year? A. July 31, 1947.

Mr. Obenour: I ask that it be admitted at this time, if the Court please.

Mr. Griffin: No objection.

Mr. LeSourd: No objection.

Mr. Keesling: No objection. [356]

The Court: That is 26?

Mr. Obenour: 27, if the Court please.

The Court: Exhibit No. 27 for identification may be admitted.

(Plaintiff's Exhibit No. 27 admitted in evidence.)

Q. (By Mr. Obenour): Similarly have the entry "Officers' Salary, $7800," does that show the salary you received as shown on the tax return?

A. I believe it is.

Q. Calling your attention to the page under Schedule F, that entry—— A. Yes.

Q. (Continuing) R. J. Schneider, Renton, Washington, president and manager, salary $7800?

A. Yes.

(Testimony of Raymond J. Schneider.)

Q. And that is the amount shown here?

A. Yes, sir.

Q. And did you pay that amount on your own tax return? A. I think I did.

Q. And of that amount of $7800, you had paid the amount, as you have described, to Mr. Forster in that year? [357] A. Yes.

Q. Did you make any inquiries as to Mr. Forster in this year as to why you should sign a tax return as president of Renton Ice and Ice Cream Company which shows an amount of salary which includes an amount which you paid back to Mr. Forster?

A. The checks were made payable to me.

Q. Did you say anything to Mr. Forster as to why you should sign such a tax return showing an amount part of which had been paid to Mr. Forster? A. No.

Q. Did you make such a request of Mr. Taylor?

A. Probably not.

Q. Calling your attention now, if you would, please, to 199, whichever exhibit would reflect the date of November 1, 1948. A. Yes, sir.

The Court: Could you give us the number of that exhibit?

The Witness: This is 199-H.

Mr. Obenour: Thank you.

Q. (By Mr. Obenour): Calling your attention now to November 1, 1948, particularly checks 6317, 18, 19 and 20? A. Yes. [358]

Q. Would you describe check 6317, please?

(Testimony of Raymond J. Schneider.)

A. 6317, November 1, W. R. Basket, balance of salary, $2,507.00.

Q. And the next check?

A. M. R. Basket, balance of salary, $1,253.00.

Q. What is the date of that check?

A. That is the same date, November 1.

Q. And the next check?

A. The next check is the same date, R. J. Schneider, balance of salary, $2,507.

Q. And finally 6320?

A. R. J. Schneider, balance of salary, 6320, $1,253.

Q. Those were four checks written two each to you and to Mrs. Basket? A. Yes, sir.

Q. Same date? A. Yes, sir.

Q. Who drew them? A. I did.

Q. Who filled out the register? A. I did.

Q. Who made distribution? A. Office girl.

The Clerk: Plaintiff's Exhibit No. 209 marked for [359] identification.

Mr. Obenour: Maybe this might be incorporated.

The Clerk: Strike that.

Mr. Griffin: Do we have a 208?

The Clerk: Yes, Plaintiff's Exhibit 208 for identification is four checks with attachments.

Mr. Obenour: I will incorporate this with the exhibit, if I may.

The Court: The four checks?

Mr. Obenour: Four checks and an attachment. 208.

Q. (By Mr. Obenour): Now, how was the

(Testimony of Raymond J. Schneider.)

amount of these four checks determined?

The Court: Well, that hasn't been identified as yet.

Mr. Obenour: Pardon me. I was about to identify it, if the Court please.

Q. (By Mr. Obenour continuing): The checks that you have described from your check register, how were those amounts determined?

A. Well, Mr. Taylor had said that we could write the balance of our salary, and I asked him what the amount was, and he said he would either bring it out or phone it. He phoned and I wasn't there, and he gave the amount to the office girl, and I then divided it in thirds and wrote two [360] checks for that amount and two for half of that amount.

Q. And is that the note that you have which made the determination—from which those checks were made? A. Yes, it is.

Mr. LeSourd: No objection.

Mr. Keesling: No objection.

Mr. Griffin: We have no objection.

The Court: Exhibit 208 for identification may be admitted.

(Plaintiff's Exhibit 208 admitted in evidence.)

Q. (By Mr. Obenour): Now, those four checks there, will you state what the endorsements are on the back of them, please?

A. The first one that is made out to me for one thousand two hundred and fifty-three dollars, Hans Forster, R. J. Schneider.

(Testimony of Raymond J. Schneider.)

Q. There are endorsements on the back of that check? A. Of this check, yes.

Q. What is the check number?

A. That is check No. 6320.

Q. And the next check to yourself of $2,507 is endorsed how?

A. Just endorsed by myself and then the bank for [361] deposit.

Q. And the next check 6318?

A. $1,253.00, No. 6318, payable to M. R. Basket, endorsed M. R. Basket and Hans Forster.

Q. And then finally, the last check of $2,507, Mrs. Basket.

A. M. R. Basket, Mazie R. Lovenger.

Q. What did you do with your $1,253 check?

A. Mailed it to Mr. Forster.

Q. And the check to M. R. Basket in the amount of $1,253 which was identified by the endorsement M. R. Basket and Hans Forster, what happened to that check?

A. I don't know whether I mailed it——

Q. (Interposing) To whom?

A. To Mr. Forster.

Q. And for what reason did you mail two checks endorsed by each of you to Mr. Forster?

A. Instructions of Mr. Taylor.

Q. And these were the amounts that had been charged against your salary account?

A. That one, yes, or the ones made payable to me.

Q. Handing you Plaintiff's Exhibit 28 for iden-

(Testimony of Raymond J. Schneider.)

tification, which has been identified as the income tax return of Renton Ice and Ice Cream Company for the year 1948, do you recognize your signature upon that return? [362] A. Yes, sir.

Q. And whose else signature is upon it?

A. L. Hicks Taylor.

Mr. Obenour: We offer it at this time, if the Court please.

Mr. Griffin: No objection.

Mr. LeSourd: No objection.

Mr. Keesling: No objection.

The Court: Exhibit 28 may be admitted.

(Plaintiff's Exhibit No. 28 admitted in evidence.)

Q. (By Mr. Obenour): Referring to the Officers' Salary in the amount of $7800. A. Yes?

Q. What is that amount?

A. I think that is the amount of my salary.

Q. Referring to the Schedule F, R. J. Schneider, Renton, Washington, president and manager, entire time devoted to business, one-third stock ownership, $7800. A. That is right.

Q. Is that the salary you received?

A. Yes, sir.

Q. And did you declare this salary on your own income tax return? [363] A. I think so.

Q. And again, did you pay the tax on it?

A. I think so.

Q. Who prepared your return?

A. Mr. Taylor.

Q. And who prepared the corporate return?

(Testimony of Raymond J. Schneider.)

A. Mr. Taylor.

Q. Did you make any inquiry of Mr. Taylor as to why you should show in the tax return of the Renton Ice and Ice Cream Company the amount of $7800 part of which had been returned to Mr. Forster? A. No.

Q. Did you make any such request of Mr. Taylor? A. I doubt it.

Q. Have you any reason why you did not?

A. Oh, it was ready for me to sign and I just signed it as prepared by him.

Q. Did you ever purchase a—any ice cream freezers from Issaquah Creamery? A. One.

Mr. Obenour: I ask that this be marked for identification, please.

The Clerk: Plaintiff's Exhibit 209 marked for identification.

(Plaintiff's Exhibit 209 marked for identification.) [364]

Q. (By Mr. Obenour): How was that transaction handled; from whom did you purchase it?

A. I talked to Mr. Forster.

They were hard to get, and he had had a shipment, and I talked him out of one. He said he could spare one, and I bought it from him.

Q. I ask if you can identify plaintiff's exhibit No. 209?

A. Check in the Issaquah Creamery Company, dated August 6th, 1948, for $412.50, signed by R. J. Schneider and L. Hicks Taylor.

Q. And for what purpose was that check issued?

(Testimony of Raymond J. Schneider.)

A. I think this was for the ice cream cabinet.

Mr. Obenour: I ask that it be admitted, if the Court please.

Mr. Griffin: No objection.

Mr. Cox: No objection.

Mr. Keesling: No objection.

The Court: Exhibit 209 for identification may be admitted.

(Plaintiff's Exhibit No. 209 admitted in evidence.)

Q. (By Mr. Obenour): And how was that paid to Issaquah Creamery, if you recall? [365]

A. By check. Oh, it would be mailed to them.

Mr. Obenour: If the Court please, I will read the endorsement on the back to the jury.

The Court: You may.

Mr. Obenour: Issaquah, pay to the order of Issaquah State Bank, Issaquah, Washington, and stamped Issaquah Creamery Company, Alpine Dairy Products, and Hans Forster.

I ask that these be marked for identification, please.

The Clerk: Plaintiff's Exhibit 210 marked for identification.

(Plaintiff's Exhibit 210 marked for identification.)

Q. (By Mr. Obenour): Calling your attention, if you would, please, Mr. Schneider, to Exhibit 199, whichever check register might be for the date of July 31, 1949?

A. No. 199-I. The date was July?

(Testimony of Raymond J. Schneider.)

Q. 31st, 1949. Is there any entry there made to the effect of notes being drawn—or where would you make such entry? Would you show notes of any sort in that book? That would be just the checks themselves, would it? A. Yes.

Q. Now, at the termination of your fiscal year 1949, [366] do you recall whether or not you received the balance of your salary?

A. I don't recall that we did.

Q. Handing you what has been marked for identification as Plaintiff's Exhibit 210, can you identify those objects, please?

A. The first one is a note dated July 31, 1949, for $3,244.80 payable on demand to Mazie Basket, 5 per cent per annum, payable semi-annually, by the Renton Ice and Ice Cream Company, R. J. Schneider, president, and L. Hicks Taylor, secretary.

Q. And what is the second one?

A. The second one is—the amount is—it is a note on demand made payable to R. J. Schneider, same date, and the amount is $2,544, Renton Ice and Ice Cream Company, R. J. Schneider, president, and L. Hicks Taylor, secretary.

Q. What was the purpose of those notes?

A. They were the balance of our salary for the year 1948-1949.

Q. Out of that total amount of $5,788.80, did you owe Mr. Forster any of that for his share of the unpaid balance of your salary? A. No.

Q. You did not? A. No. [367]

(Testimony of Raymond J. Schneider.)

Q. Did you believe that that amount was your unpaid balance of your salary?

A. Yes, sir.

Q. And that Mr. Forster had no interest in it?

A. Yes.

Q. Did you receive payment for your note?

A. Paid and cancelled; I think I did.

Q. And do you have a check there that would reflect the payment of that note?

A. There is a check payable to me for $2,544, which is the amount of my note.

Q. And what is the date which is marked "cancelled" on your note, or does it show?

A. It doesn't show.

Q. And calling your attention to January 4, 1950, the check register of item 199; do you have that? A. The date again?

Q. January 4, 1950. A. Yes.

Q. Now, what is the entry on that check?

A. January 4, M. R. Basket, balance of salary, $3,244.80.

Q. And what is the amount of her note?

A. $3,244.80.

Q. And that is charged to balance of salary on the [368] check? A. Yes.

Q. And the note had been drawn for the balance of her salary in July? A. Yes.

Q. Had that check in the amount of $3,244 been to pay off the note to her? A. Yes.

Q. And the next check in the amount of $2,544—

(Testimony of Raymond J. Schneider.)

$2,544, to you on the same date, is there such a check? A. Yes.

Q. And what is the entry on that?

A. On the check?

Q. How was that check registered there?

A. R. J. Schneider, balance of salary, $2,544.

Q. And similarly, was that to pay off your note?

A. It was.

Q. And were both of those charged against the salary of you and Mrs. Basket? A. Yes.

* * * * * [369]

Mr. Obenour: The check in the amount of $3,-244.80 to Mrs. Basket is endorsed M. R. Basket and check to R. J. [370] Schneider, $2,544 is endorsed R. J. Schneider.

Q. (By Mr. Obenour): Will you tell the Court what you did with those two checks, please?

A. They apparently were deposited or, I should say, I cashed them, or we cashed them.

Q. And what did you do with the proceeds?

A. Probably bought cashier checks of some sort or form.

Q. Did you buy a cashier's check with part of the proceeds for Mr. Forster?

A. I wouldn't know without seeing it.

Q. To the best of your recollection, would you have followed the same pattern you did in 1945, '46, '7 and '8 in cashing the checks at the Renton Bank and buying cashier's checks?

Mr. Griffin: I object to the form of the question.

The Court: Objection sustained.

(Testimony of Raymond J. Schneider.)

Q. (By Mr. Obenour): I believe you stated you have bought cashier's checks with the proceeds?

A. This time?

Q. Yes. A. Gosh, I don't remember.

Q. To the best of your recollection. [371]

A. I don't remember a thing about the details on it. I mean, I don't know whether I was able to keep this all this time, or still divide it. [372]

* * * * *

Q. You paid tax on your own return. Did you ever make any inquiry of Mr. Forster or Mr. Taylor as to why you should have paid taxes between the years 1945 to 1949 of an amount $14,062.53 which was given back to Mr. Forster?

A. I believe not. [374]

* * * * *

Q. (Continuing) Do the corporation records show in any manner that the amount of $14,062.53 was paid to Mr. Forster in the years 1945 through 1949? A. I think not.

Q. Did you ever question this manner of transmitting funds to Mr. Forster to Mr. Taylor; in other words, make any inquiry of Mr. Taylor of that?

A. Yes, when he first did it, I asked why. [375]

* * * * *

Mr. Griffin: If the Court please, while I must disagree entirely with the Government's argument that this is a scheme to evade taxes, and it is in no sense that, I make this statement—I must say to your Honor—that the manipulation of these books

(Testimony of Raymond J. Schneider.)

of one of these entities of Mr. Forster unquestionably resulted in additional income to Mr. Forster. There can be no question or doubt about that, because there was more to divide in the years in question.

The Court: In the years involved in this Indictment?

Mr. Griffin: Yes.

Now, I don't want my statement taken as any admission of the Government's position at all of a scheme, device, or anything of that kind, but factually and manifestly [405] as it will show on the face of the record itself, when you do a certain thing in the books, you either increase income or you decrease it. You don't do anything else, and that is what happened here. It didn't have to wait until 1949 for division. While there were no dividends, what was being done each year is, as a matter of fact, whether you call it bonus or anything else, but, if operated as it should have been, it would have been a dividend to the stockholders so that would in this instance, in changing the books, would have resulted in a greater dividend or a greater bonus or a greater charge to salary to Mr. Forster. We concede it. [406]

* * * * *

Q. (By Mr. Obenour): Calling your attention to the month of July, 1947, if you would, please, that is Exhibit 212, is it, yet? A. 212, yes.

Q. Now, were there any—did you keep the accounts in that month? A. Yes, I did.

(Testimony of Raymond J. Schneider.)

Q. Are the figures in your handwriting?

A. Most of them.

Q. What figures are not in your handwriting?

A. There are some addition here of 1's that are [421] not in my handwriting.

Q. Now, would you tell the jury what are the accounts where there are some 1's not in your handwriting?

A. There is an item here of July 15, Seattle Brewing & Malting.

Mr. Moriarty: What year?

Q. (By Mr. Obenour): What year is this?

A. 1947.

Q. This is all in the same month and the same year? A. Yes, sir.

Q. All right. What is the item now?

A. There is an item here on the 15th to Seattle Brewing & Malting, $1,886.40.

Q. What figure is not in your writing?

A. The "1".

Q. Which figure is that; what is the effect of that "1"?

A. Well, it raised it from $886.40 to $1,886.40.

Q. Who made that additional figure?

A. Mr. Taylor.

Q. And the next item is what?

A. Issaquah Creamery on the 18th of July. The figure originally was $426. It is now $1,426.

Q. And the next one, please? [422]

A. Issaquah Creamery, then $274, it is now $1,274.

(Testimony of Raymond J. Schneider.)

Q. And the next one?

A. The next one is on the 22d, Seattle Brewing, it was $886.40. It is now $1,886.40. Similarly, on the 23d, Seattle Brewing, it was $886.40, it is now $1,-886.40.

On the 25th, Issaquah Creamery, was $448.50, is now $1,448.50. On the 29th, Issaquah Creamery, was $585.50; is now $1,585.50.

On the 28th, Seattle Brewing and Malting, was $581.64, is now $1,581.64.

On the 29th, Seattle Brewing, was $886.40, is now $1,886.40.

The next entry, L. Hicks Taylor, $650, is not in my writing.

Q. How many 1's were added to that?

A. Nine, I believe.

Q. And did that then raise your accounts payable nine thousand dollars in that month?

A. Yes, sir.

Q. When were those 1's placed there in that book?

A. When Mr. Taylor was adding it up.

Q. How do you know Mr. Taylor did it?

A. I saw him.

Q. Did you have any conversation about raising your accounts payable nine thousand dollars for the month of [423] July, 1947?

A. I am not sure.

Q. Did he make any statement to you about raising your accounts payable to that month?

(Testimony of Raymond J. Schneider.)

A. If so, the answer was as before; it would be adjusted in the next period.

Mr. Cox: I move to strike that as an entire supposition.

The Court: The answer may be stricken, and the jury will disregard it.

Q. (By Mr. Obenour): What amount did you pay in each of these nine accounts to the distributor or supplier to the Renton Ice and Ice Cream?

A. The first amount that I mentioned. I don't think any of them ran over;—I think they were all under—one thousand dollars.

Q. Did you pay any of that nine thousand dollars on accounts payable?

A. I believe not.

Q. Was there any basis by which Mr. Taylor could justify raising any of those accounts one thousand dollars each?

Mr. Cox: Object to the form of the question; calling for a conclusion. [424]

The Court: Objection sustained.

Q. (By Mr. Obenour): Was there any debt owed on any account payable, owed to any of those nine accounts, which would amount to those thousand dollar items to which you testified?

A. Not that I know of.

Mr. Cox: Object to the form of the question. I move to strike.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

(Testimony of Raymond J. Schneider.)

Q. (By Mr. Obenour): And the answer was what, please? A. Not that I know of.

Q. Was this the end of your fiscal year, this month? A. Yes, sir.

Q. For 1947. A. Yes, sir.

Q. What was the effect of raising your accounts payable at the end of your fiscal year in 1947 nine thousand dollars? A. It made us owe more.

Q. And what then was the effect upon your income for that as shown by your books of Renton Ice and Ice [425] Cream?

A. We would make less.

Q. And what would be the effect of your taxes paid for the year 1947?

A. We would pay less.

Q. Pay less? A. Pay less.

Q. Taxes? A. Yes. * * * * * [426]

Cross Examination

* * * * *

Q. (By Mr. Griffin): I don't care whether you call it profits, you made a division of surplus or profits or money you had in the corporation and not expended, didn't you?

A. We made a division of salary.

Q. Or, you call it "salary", but it was unexpended money that the corporation had?

A. Yes.

Q. And you called it salary because Mr. Taylor set it up that way at the beginning, didn't you?

A. Yes, sir.

(Testimony of Raymond J. Schneider.)

Q. Now, in determining what that division should be in each instance, as I understand your testimony, Mr. Taylor computed what he called salary and how the checks should be drawn, is that right? A. That is right. * * * * * [433]

Cross Examination

Q. (By Mr. Cox): And when Mr. Taylor first brought this matter up, did you call Mr. Forster to ask if this had his approval? A. No.

Q. Did you talk to Mr. Basket about it?

A. Yes, he was right there.

Q. He was right there; did you protest to Mr. Taylor that this was your money for which you had worked and for which the corporation had authorized you to receive?

A. That is correct, on the first or second time I did that, or we did that.

Q. What did he say?

A. Well, he said Mr. Forster has made this possible for you to have this salary, and has earned a certain amount of it so he is entitled to it and we will send it to him.

Q. And then you sent it without bothering to call Mr. Forster; you say he wanted you to do this? [467] A. That is right.

Q. Did Mr. Forster call you up and ask what is the nature of the check he received in the mail?

A. No.

Q. Did he offer to send it back? A. No.

Q. Did he ever mention it to you?

(Testimony of Raymond J. Schneider.)

A. He thanked me for it a time or two when I met him next. [468]

* * * * *

Q. And then, referring to April 17, 1945, do you find there a series of three checks, numbers 3180 through 3183, the first to yourself, and charged to notes payable in the amount of three hundred and seventeen? A. Yes.

Q. And one to Mrs. Basket for two thousand three hundred seventeen? A. Yes.

Q. And one to each of you for half of that amount, $1,158.50? A. Yes.

Q. And who made the entries on the check register? A. I made them.

Q. Who made the distribution in the check register?

A. The office girl, I believe. It isn't my handwriting.

Q. I hand you Plaintiff's Exhibit 203 in evidence. Are those the—are those three of the checks to which you refer, the ones which were drawn to Mrs. Basket for $2,317 and the two to you and Mrs. Basket for half of that sum?

A. Yes, that is right.

Q. Who signed those checks?

A. R. J. Schneider and Hans Forster. [476]

Q. Is there anything in the check register with respect to either April 11 or April 17, 1945, which indicates that Mr. Taylor was present in your office at Renton at that time?

A. Nothing in the register, no.

(Testimony of Raymond J. Schneider.)

Q. Then this would simply have been another case where Mr. Taylor perhaps referred to your books to give you the balance of the salary and indicated the amounts that were to be distributed?

A. That is right.

Q. Now, you testified that back at the beginning of this year, some three or four months before this time, at this meeting, after Mr. Basket's death, there was no discussion of whether you would continue to divide your salaries with Mr. Forster?

A. No, sir.

Q. All right; why did you make the division at this point?

A. As usual, we have the amount of the instructions from Mr. Taylor.

Q. And those instructions were to give Mr. Forster half—one-third of your undrawn shares?

A. Yes, whatever the amount was.

Q. Did you protest at this time to Mr. Taylor to this continued sharing of your salary with Mr. Forster? [477] A. I doubt it.

Q. Did you call Mr. Forster to find out whether he wanted you to go on with this? A. No.

Q. Did he ever thank you for that check?

A. Possibly.

Q. What is the charge made by your office girl on the—those checks on the 17th of April, 1945?

A. They are all made payable to notes payable. * * * * * [478]

Q. And it had been a considerable surprise to

(Testimony of Raymond J. Schneider.)

you when Mr. Taylor suggested you should give a part of it to Mr. Forster? A. Yes.

Q. And yet, having the right to draw or issue the checks and the sum having been determined in this way, it never occurred to you to write checks to yourself and Mr. Basket for the amount of your salaries?

A. Never until Mr. Taylor said it was the time to do it.

Q. Now, did you receive the check for $1,158.50 which you drew in favor of yourself on April 17, 1945?

A. Yes, I would say I did. I don't believe I have it here now.

Q. You don't have those checks there?

A. I think I did.

Q. I will get them for you. Handing you Plaintiff's Exhibit 203, does that include a check payable to yourself dated April 17, 1945, in the amount of $1,158.50? A. Yes.

Q. Did you receive that check?

A. Yes. [485]

Q. I believe you testified on direct on Friday that you mailed that check to Mr. Forster?

A. Yes.

Q. Mr. Forster signed the check, didn't he?

A. His stamp is on here.

Q. I mean the front of the check?

A. Yes.

Q. Wouldn't it have been a little more logical to hand it to him when he signed it?

(Testimony of Raymond J. Schneider.)

A. Not in this case.

Q. Why not?

A. Mr. Forster signed checks ahead of time, and I completed them.

Our by-laws stated there must be two signatures on each check.

Q. And you can recall independently this was a check Mr. Forster signed in blank which you used April 17, 1945?

A. No, I can't recall that.

Q. Do you know then that Mr. Forster was not present in the office on that day?

A. No, I don't.

Q. If he had been present, you would, of course, have handed the check to him?

A. Yes, I think I would. [486]

Q. Did he express any surprise?

A. I don't recall anything about it. * * * * *

Q. (By Mr. Cox): Now, will you turn to the entries for July, 1947, in this accounts payable record?

You testified this morning that some alterations were made by Mr. Taylor after you made the entries for this month, is that true?

A. That is right.

Q. When was this done?

A. While he sat at the desk in our office.

Q. Did you see him actually insert the nine figure "1" that you testified this morning were inserted in front [514] of certain entries in that record? A. Yes.

(Testimony of Raymond J. Schneider.)

Q. Do you have any recollection of the day of the month itself that Mr. Taylor came out in August, 1947?

A. No, I have no recollection unless I could find it.

Q. Do you recall when you yourself totalled these figures? A. No, I didn't total them.

Q. You didn't total them at any time?

A. I don't believe so. I don't see any of my figures there as that total.

Q. Well, wasn't it your testimony that you normally totalled those as soon as you could at the end of the month?

A. Yes, sir.

Q. And normally, you would have done so at this time? A. Yes, sir.

Q. And you testified several times that normally Mr. Taylor was paid on the day he came out and did the work on the books, isn't that true?

A check would normally be written to him?

A. Yes.

Q. Directing your attention to that portion of Plaintiff's Exhibit 199-F, bearing the date August 8, 1947, [515] doesn't it appear that the check to Mr. Taylor for his fifty dollars for the preceding month's accounting work was issued to him and given to him on that date?

I am calling your attention now to the check register.

A. Yes, I am trying to see whether it is the same year or not.

(Testimony of Raymond J. Schneider.)

Q. It appears on the outside that this is May 23, 1947, to December 21, 1947.

A. Yes, it does.

Q. Can you explain to the Jury how it was that you departed from your normal custom of totalling your figures in the accounts payable as soon as you could after the end of the month in this case until Mr. Taylor came out on the 8th of August?

A. I couldn't tell exactly why, whether I was away for a day or a week, or whether he told me to leave the books open until he got there. In any case, I apparently didn't total it.

I don't see any of my figures as a total.

Q. Now, I believe at one time, you stated that Mr. Taylor indicated that this was a matter of an adjustment he was making here? A. Yes.

Q. Just what kind of an adjustment could Mr. Taylor [516] have made in a record of this kind?

A. I am not enough of an accountant or bookkeeper to tell you that. [517]

* * * * *

Q. (By Mr. Cox continuing): Isn't it true that the total that now appears there is exactly nine thousand dollars in [521] excess of the true total of the true total of the unpaid accounts at the end of July, 1947?

A. I think so, but I haven't run through them lately to recall at all to be sure of it.

Q. Now, isn't it true, Mr. Schneider, that the figures—some of the figure "1's"—in fact, nearly

(Testimony of Raymond J. Schneider.)

all the figure "1's" that are entered there are very easily detected? A. Oh, yes.

Q. It is not necessary, for instance, for you to go back to your invoices to determine that in fact the invoices that still remained unpaid there was the lesser figure?

A. (Witness nodded in the negative.) I mean, it is plain, very plain.

Q. It is very clear. Now, Mr. Taylor still owned no stock in the Renton Ice and Ice Cream Company, did he, on July 31, 1947? A. No.

Q. He would, therefore, never be entitled to receive a dividend from this corporation or to share in its assets or distribution?

A. No, not that I know of.

Q. You did own stock in the corporation, did you not? [522]

A. Yes, sir.

Q. You were one-third stockholder?

A. Yes.

Q. You were the president and general manager? A. Yes, sir.

Q. And you thought there was nothing wrong with what was done, so far as those accounts payable were concerned, so far as the income tax goes?

A. He assured me there was nothing wrong.

Q. Nothing wrong. [523]

* * * * *

Recross Examination

Q. (By Mr. Keesling): I show you the accounts payable record to which Mr. Cox referred, Exhibit

(Testimony of Raymond J. Schneider.)

212, and referring to the date of July, 1947, in response to a question of Mr. Cox, you stated that with respect to this page headed January 1, 1948, that is the page on which these alterations were made——

Mr. Cox: January 1, 1948?

Mr. Keesling: Just a second here. I guess it isn't that.

Q. (By Mr. Keesling continuing): No, there is no heading on that [587] particular page, is that right? During the month of July of 1947?

A. Yes.

Q. And that is the page that contains the nine alterations of one thousand dollars each that were entered by Mr. Taylor, is that right?

A. Between these two pages, yes.

Q. Between these two pages? A. Yes.

Q. And those were the ones entered by Mr. Taylor personally? A. Yes.

Q. With respect to those alterations, you said you relied on Mr. Taylor. He made some statement concerning those, didn't he?

A. Yes, he said that, when I questioned it, he said it was all right, and not to worry about it, and he would adjust it in the next period.

Q. In other words, you relied on his explanation that he would take care of it and adjust it?

A. Absolutely.

Mr. Keesling: No further questions.

(Testimony of Raymond J. Schneider.)

Further Redirect Examination

Q. (By Mr. Obenour): What was the date that Mr. Taylor first told you [588] that you should follow these plans of giving Mr. Forster a share of the income from the Renton Ice and Ice Cream?

Mr. Cox: Object to the form of the question.

The Court: Objection overruled.

The Witness: Should I answer it?

Mr. Obenour: Yes.

A. It is hard to tell you the exact date, but I believe that it was in 1944.

Q. (By Mr. Obenour): Did you ever—what was the occasion that Mr. Taylor first gave you directions for distributing this money?

A. Whatever the instructions contained, it seemed a little out of the ordinary so I asked about it, and had that answer that I have given, that he should share in that salary.

Q. Had Mr. Taylor given you those instructions in 1943 when distribution was made of the matter to which you previously testified?

A. I don't believe so. I am not sure about that. I don't recall that he did. * * * * * [589]

Q. (By Mr. Cox): And, having increased arbitrarily, as you have testified, certain items in this record, there is no adjustment that could be made in a subsequent period that would correct that, is there, since these were obligations that existed only at the end of the fiscal year, 1947?

(Testimony of Raymond J. Schneider.)

A. From my knowledge of tax work, I wouldn't be able to say "yes" or "no" to that.

Q. You just believed somehow this could be made right? A. Certainly. [593]

* * * * *

MAZIE LOVINGER

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: I want your full name, and the spelling your name, please.

The Witness: Mazie Lovinger.

The Clerk: L-o-v-i-n-g-e-r (spelling)?

The Witness: Yes.

Q. (By Mr. Obenour): Will you state your name, please? A. Mazie Lovinger.

Q. And where do you live, Mrs. Lovinger?

A. 350 Garden Street, Renton.

Q. And are you the widow of C. M. Baskett?

A. Yes. [595]

* * * * *

Q. (By Mr. Obenour): Now, handing you Plaintiff's Exhibits 203, 204, 206, 207 and 208, would you please examine those checks and identify those checks issued to you, Mazie Baskett, in the amounts stated, and the endorsements and as to the disposition you made of them, please?

A. Mazie Baskett, $1,158.50, and the endorsement is Mazie Baskett.

(Testimony of Mazie Lovinger.)

Q. And what did you do with that check, please?

A. I deposited it. No, that one, I didn't. [608]

Q. What did you do with that one?

A. I returned that to Mr. Schneider.

Q. For what reason did you return it to Mr. Schneider? A. To give to Mr. Forster.

Q. And what is the other check there?

A. $2,317, to Mazie R. Baskett.

Q. What did you do with that check?

A. I deposited that.

Q. And for what reason did you give that to Mr. Schneider for Mr. Forster, that $1,158 check?

A. Because he asked me to endorse it and hand it back to him.

Q. Did you ask Mr. Schneider anything about why he should return that check to you, or to Mr. Forster? A. No.

Q. Did you ask Mr. Forster? A. No.

Q. Did you ask Mr. Taylor? A. No.

Q. Is there any reason why you would not ask anyone about returning a check made out to you to Mr. Schneider for Mr. Forster?

Mr. Griffin: Objected to as cross-examination of his own witness. [609]

The Court: Objection sustained.

Q. (By Mr. Obenour): The next check is what, please?

Mr. Cox: May we have the exhibit?

A. Mazie Baskett.

The Court: Is that marked as an exhibit number?

(Testimony of Mazie Lovinger.)

The Witness: 204. I believe that is it right there, isn't it?

The Court: Yes.

A. (Continuing) Mazie Baskett, $4,110, and Mr. Schneider handed it to me and asked me to endorse it, and I handed it back to him.

Q. And the next one in order, please?

A. Mazie Baskett, $2,892.60.

Q. And what date is that?

A. That is September 7, 1946.

Q. And the exhibit number, please?

A. 206.

Q. And what is the endorsement on that?

A. Mazie Baskett and R. J. Schneider.

Q. What did you do with that check?

A. I gave it back to him.

Q. To whom? A. Mr. Schneider. [610]

Q. And the next one, please, there; what is the exhibit number, now, please?

A. 207. Mazie Baskett, $3,960.

Q. What date is that?

A. September 10, 1947.

Q. And how was that endorsed?

A. Mazie Baskett.

Q. And what did you do with that check?

A. Handed it back to Mr. Schneider.

Q. Those three checks for the years 1945, 1946 and 1947, what then happened after you gave those checks, I believe you said, back to Mr. Schneider?

A. He brought me a cashier's check from the

(Testimony of Mazie Lovinger.)

bank for one-third of the amount of his check and my check.

Q. And what happened then as to each of those three checks made out to you and endorsed by you?

A. I endorsed them, and he took them.

Q. What happened then to the amount that you did not receive from your check?

A. All I know is that he said he was going to get cashier's checks, one for Mr. Forster, one for himself, and one for me.

Q. Did you ever question him then about why you should give your check back to him and then receive a [611] lesser amount?

A. No, because that was my understanding.

Q. What did those checks represent, to your knowledge? A. Accrued wages.

Q. From what?

A. Because I was to receive six thousand a year.

Q. And how much were you receiving in regular salary? A. $170 a month.

Q. And this then was what?

A. The balance that was due.

Q. Between these amounts you actually received and the six thousand? A. Yes.

Q. How much of that were you permitted then to retain in each of those years?

A. One-third of the amount of the two checks together.

Q. And did Mr. Schneider receive any of it?

A. As far as I know, he did.

Q. And who else then? A. Mr. Forster.

(Testimony of Mazie Lovinger.)

Q. Now, the next check there, please, is 1948. What [612] is the—on the back of that exhibit—pardon me—— A. (Interposing) Oh.

Q. What is that exhibit number, please?

A. 208.

Q. Those checks, would you identify those written to yourself, please?

A. M. R. Baskett, November 1, 1948, $1,253, endorsed by M. R. Baskett and Hans Forster.

Q. What did you do with that check?

A. Endorsed it and gave it to Mr. Schneider.

Q. For what reason?

A. The same as before.

Q. Which is?

A. Well, to give to Mr. Forster, I suppose.

Q. And the other check is what?

A. M. R. Baskett, $2,507.

Q. Now, handing you Plaintiff's Exhibit 210, which has been identified as two notes and two checks, there is one written with your name upon it. Would you note the date of that note, please?

A. July 31, 1949.

Q. Did you see that note at that time?

A. No.

Q. When did you first see that note?

A. February 5, 1954. [613]

Q. And the—would you then examine the check as made out to yourself?

A. M. R. Baskett. I can't see the month. January.

Q. What date?

(Testimony of Mazie Lovinger.)

A. January 1, it looks like, 1950.

Q. And what is the amount of that check?

A. $3,244.80.

Q. Does that correspond with the note there in the same amount?

A. No, it doesn't. Yes, it does.

Q. What are the endorsements then on that check to you?

A. Mazie Baskett, M. R. Baskett.

Q. When did you receive that check?

A. It was the first part of January, of 1950.

Q. Were you told what it was for when you received it? A. Yes.

Q. Who gave it to you?

A. Mr. Schneider.

Q. What were you told when you received it?

A. To endorse it and he would take it and take care of it.

Q. And did you—what then happened to [614] that check?

A. I received one-third of the amount of these two checks together.

Q. In what form?

A. I couldn't say whether that was a cashier's check or the—or a company check.

Q. Were you told what that check was for when you received it in regard to the note?

A. Just that we were going to pick up these notes.

Q. Had you received any information about the notes prior to that time?

(Testimony of Mazie Lovinger.)

A. It was mentioned to me that they were going to make out notes.

Q. Who made out your tax returns during this period of time? A. Mr. Taylor.

Q. What amount was set forth on your tax returns during this period as salary received by you from Renton Ice and Ice Cream Company?

A. Six thousand dollars.

Q. Did you ever in any of the years between 1945 and 1949 receive six thousand dollars that you retained from Renton Ice and Ice Cream Company?

A. No. [615]

Q. Did you ever question Mr. Taylor about the preparation of your tax returns showing six thousand dollars which was more than you received from Renton Ice and Ice Cream? A. No.

Mr. LeSourd: I object to the question in that it assumes it is more than she received and the testimony shows she received.

Mr. Obenour: She said "yes," that——

Mr. LeSourd: (Interposing) Well, received and retained, was the first question, Mr. Obenour.

The Court: Well, the objection is overruled.

Q. (By Mr. Obenour): Your answer was that, please? A. No.

Q. And you ever ask Mr. Taylor why the checks were made out in that manner to you and you were required to send them back by Mr. Schneider to Mr. Forster?

A. No, I had nothing to do with the office or any part of it. * * * * * [616]

Mr. LeSourd: Mr. Griffin suggests that I proceed first, your Honor.

In the first place, if the Court please, the Defendant Taylor renews at this time his motion for severance made prior to the commencement of trial, and renewed during the Government's case.

This motion and this renewal is based upon the fact that there has occurred during this case the very situation that the motion brought to the attention of the Court prior to this trial was directed to, and that is the testimony as to hearsay, self-serving statements, on the part of some of the defendants affecting the Defendant Taylor, and, while the Court instructed the Jury that those statements were not to be taken as affecting the Defendant Taylor, nevertheless the effect of those is prejudicial, even so, to this [635] defendant and where such a motion for severance has been made in advance of the trial, it is improper not to claim the severance when that situation arises.

May I ask the Court, I have many motions here, whether the Court desires to rule on these as we go along?

The Court: Well, I will rule on them as we go along if you have completed your statement on them.

Mr. LeSourd: I have, on that.

The Court: All right, the Court will deny the motion.

Mr. LeSourd: And may the record show an exception?

The Court: I assume under the rules that an exception is automatic.

Mr. LeSourd: Yes, I assume so, also. [636]

* * * * *

[Endorsed]: Filed March 11, 1955.

[Endorsed]: No. 14656. United States Court of Appeals for the Ninth Circuit. Hans Forster, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed: February 12, 1955.

Supplemental Filed March 16, 1955 and April 12, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14656

HANS FORSTER, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

STATEMENT OF POINTS ON APPEAL

Pursuant to Rule 17(6) of this Court, Appellant submits the following statement of the points on which he intends to rely:

1. The Court erred in refusing to grant the defendant Forster's motions for mistrial and renewals thereof, which motions were based upon statements contained in the opening statement of counsel for defendant L. Hicks Taylor relating to the proposed defense arising out of the alleged actions of George F. Kachlein, Jr., as attorney for Taylor and Forster and were further based upon testimony adduced in support of the said defense.

2. The Court erred in excluding from evidence defendant Forster's Exhibits A-84, A-85, A-86, A-87, and A-88 which tended to prove the relationship existing between the defendants Forster and Taylor and the status of Taylor.

3. The Court erred in excluding the offered rebuttal testimony on behalf of defendant Forster of the witness Vern Egeness.

4. The court erred in excluding the offered rebuttal testimony on behalf of defendant Forster of the witness Frank B. Donaldson.

5. The Court erred in excluding the offered rebuttal testimony on behalf of defendant Forster of the witness Philip A. Strack.

6. The court erred in excluding the offered rebuttal testimony on behalf of defendant Forster of the witness Quentin Ellis.

7. The Court erred in instructing the jury, as a supplemental instruction on the issue of wilfulness at the request of the jury and over objection of defendant Forster, as follows:

"Now, to supplement that, as I say again, I am going to give you, in substance, the same matter.

"When used in a criminal statute—that is the word 'willful' or 'willfully'—when used in a criminal statute it generally means an act done with a bad purpose, without justifiable excuse, stubbornly, obstinately, perversely.

"The word is also characterized—employed to characterize a thing done without ground for believing it lawful, or conduct marked by reckless disregard whether or not one has the right to *to* act."

8. The Court erred in refusing to grant defendant Forster's motion for a new trial, based upon the error in instructions above set forth.

Dated this 11th day of February, 1955.

TRACY E. GRIFFIN,
J. KENNETH BRODY,
/s/ By J. KENNETH BRODY,
Attorneys for Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed Feb. 12, 1955. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STIPULATION FOR RECORD ON APPEAL

It Is Stipulated that as a part of the record on appeal in the above cause that on January 6, 1954, L. Hicks Taylor filed a motion for severance from the defendant Hans Forster and executed an affidavit which reads in part:

"* * * affiant believes that the government will present strong cases against the defendants Forster and Erickson on all nine counts and with respect to all of the allegedly unreported income * * *"

And further affiant Taylor deponed:

"That when charges were filed against the defendants named herein in March, 1952, the defendant Forster released to the newspapers carefully prepared stories emphasizing his beginnings as a penniless immigrant, carefully playing up the fact that affiant had previously pleaded guilty to a charge of attempted evasion of his own income tax liability, and stating that he, Forster, was innocent, and was in trouble only because he had trusted affiant; that both before the filing of said charges and since, the defendant Forster has conducted an artful campaign to attempt to shift to affiant responsibility for his own acts, and has induced the defendant Erickson to join him in this effort; that as a result affiant believes, and is advised by his counsel, that he will be substantially prejudiced if he is forced to stand trial jointly with the defendants Forster and Erickson because of the concerted effort they have made, and will undoubtedly continue to make during the trial, to fix upon him responsibility for their own acts;"

That the motion of defendant Taylor was argued before the Court on January 11, 1954, and after counsel for the defendant Taylor and counsel for the Government had concluded their arguments

Forster's attorney, Tracy E. Griffin stated to the Court that he opposed the motion and if the Court intended favorably to consider defendant Taylor's motion, he desired to be heard on the matter. That after this statement the Court denied the motion of the defendant Taylor for severance.

Dated this 31st day of January, 1955.

TRACY E. GRIFFIN,
J. KENNETH BRODY,
Attorneys for Appellant

/s/ CHALES P. MORIARTY,
United States Attorney, Attorney for Appellee

[Endorsed]: Filed Feb. 12, 1955. Paul P. O'Brien, Clerk.